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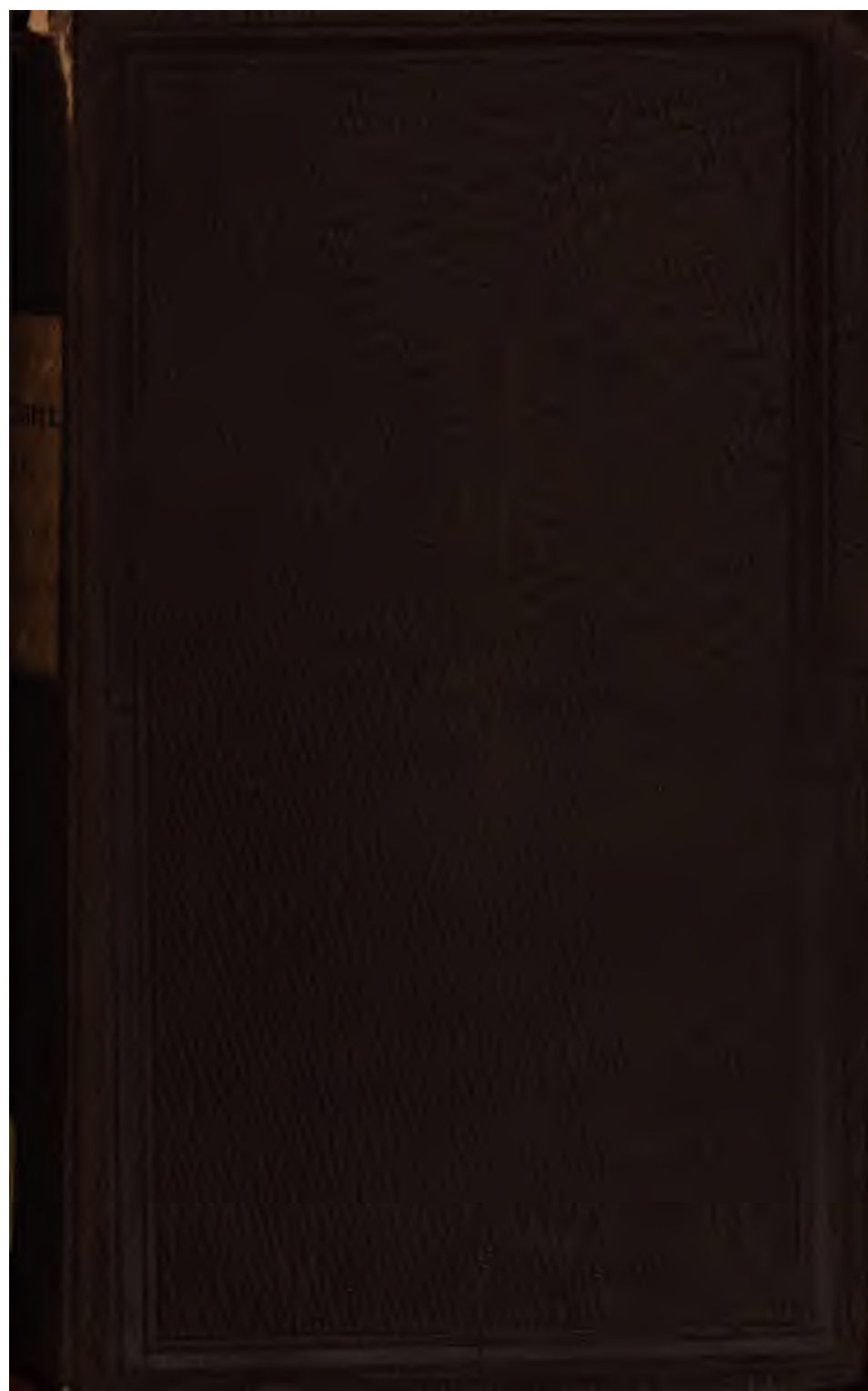
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ADVOCATE; AND BARRISTER AT LAW, OF GRAY'S INN,

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THE
Common Form Practice
OF THE
COURT OF PROBATE,
IN
GRANTING PROBATES
AND
LETTERS OF ADMINISTRATIONS,
WITH
THE NEW ACT,
(20 & 21 VICT. c. 77,)

ALSO,
THE RULES, ORDERS AND INSTRUCTIONS
IN RESPECT OF NON-CONTENTIOUS BUSINESS AS WELL AS
CONTENTIOUS BUSINESS;

TOGETHER WITH
THE OFFICIAL TABLE OF FEES, &c.:
AS ISSUED 9TH JANUARY, 1858.

BY
HENRY CHARLES COOTE,
PROCTOR IN DOCTORS' COMMONS,
Author of "The Practice of the Ecclesiastical Courts."

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1858.

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BELL YARD, TEMPLE BAR.

TO
THE HONOURABLE
SIR CRESSWELL CRESSWELL, KNT.

JUDGE OF HER MAJESTY'S COURT OF PROBATE,
AND JUDGE ORDINARY OF HER MAJESTY'S COURT FOR DIVORCE
AND MATRIMONIAL CAUSES,

THIS ATTEMPT

TO EXPLAIN

THE COMMON FORM PRACTICE
OF

The Court of Probate,

IN ACCORDANCE WITH THE PRINCIPLES HITHERTO EXISTING,
AND NOW RECOGNIZED BY THE 27TH SECTION OF
THE ACT 20 & 21 VICT. c. 77,

IS,

WITH HIS LORDSHIP'S KIND PERMISSION,

RESPECTFULLY DEDICATED

BY

THE AUTHOR.

JAN. 1858.

PREFACE.

HITHERTO there has been no attempt, in a monograph form, to explain the principles which regulate the granting of Probates and Letters of Administration; and the reason of this deficiency has been a natural one.

So long as the practice in Common Form was, by law, confined to certain select Practitioners, to whose skill and character no exception was raised, such a kind of explanation (*a*) was not required, either by the Public or the General Legal Profession.

(*a*) If the reader is curious to know the conditions under which this practice (called *Common Form*) was formed and founded, he is referred to Mr. Edwin Edwards's "Sketch of the Origin and early Progress of the Ecclesiastical Jurisdiction," (a most excellent book,) and to "Law Magazine," vol. liii. p. 1, and vol. liv. p. 110, and "Law Magazine and Law Review," vol. i. p. 252.

This is not merely an excuse for a want of candour, which might, *primâ facie*, seem discreditable to the now existing Practitioners; but is, I believe, the true and rational solution of a fact to which an analogy may be found on the other side of the Channel, in the case of the French Notaries.

Like the Proctors, they have been accused of making this part of their art a mysterious property, in the knowledge of which neither the Public nor the General Profession should participate (*b*). But in the case of the Proctors, the duration of their property has determined. The Legislature has thought good to abolish this ancient division of legal labour, and to throw upon the General Profession what was formerly a select and special practice. It may,

(*b*) M. Laboulaye, the Professor of Comparative Legislation at the *College de France*, in an Article in the *Revue Historique du Droit Français et Etranger*, tom. i. p. 18, says of the Notaries, "de tout temps les notaires ont fait de leurs actes une je ne sçais quelle mystérieuse propriété qu'ils ont tenue loin des yeux profanes."

therefore, be considered, that the interests of the Public require that some methodized information should be afforded for the guidance of the layman, and also of the Legal Practitioner, whose multiplied engagements will not readily permit him to compose for himself a manual of practice out of the *indigesta moles* of the Ecclesiastical Reports.

An attempt to supply this information is made in the ensuing pages, which have been written with the aid and co-operation of my esteemed and excellent friend, William Kitching, Esq. (c). The subject-matter of this Work being his own *spécialité*, he most kindly consented to take a share in the labour, thus giving to these pages an accuracy and precision which the Practitioner will not fail to appreciate.

In conclusion I will observe, that the subject of Foreign Wills has been *intentionally* touched upon only very slightly; for it is impossible, in

(c) For many years in office in the Prerogative Court.

the present unsettled state of the practice upon that subject, to lay before the Public, in this respect, explanation which will be either definite or practically useful.

HEN. CHARLES COOTE.

Doctors' Commons.

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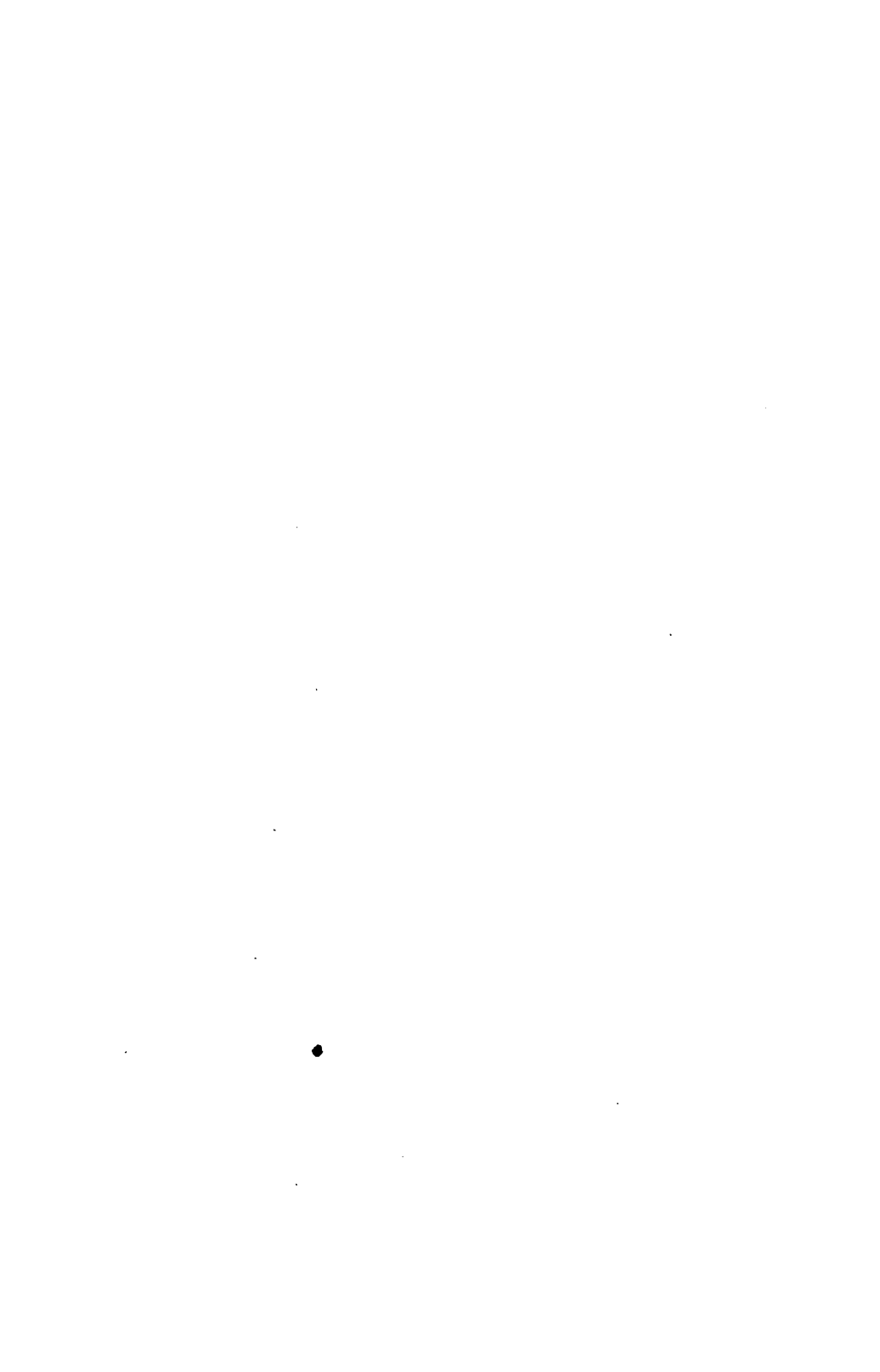
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COMMON FORM PRACTICE
OF
THE COURT OF PROBATE.

CHAPTER I.

THE CONSTITUTION AND JURISDICTION OF THE
COURT OF PROBATE.

AT a date to be appointed by her Majesty's Order in Council, not sooner than the 1st of January, 1858, the Act 20th & 21st Vict. c. 77, "An Act to amend the Law relating to Probates and Letters of Administration in England," will come into operation.

By the law abolished by this act the custody Prior ecclesiastical jurisdiction. of and primary legal succession to the personal estates of all deceased persons was vested in the ecclesiastical *ordinarius loci*, subject to the exceptional right of the Queen in respect of a royal peculiar, and of a lord in respect of a manor.

But it is enacted by the 3rd section of this Abolition of the ecclesiastical jurisdiction. act, that "the voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial and other courts

Transfer of
the ecclesiastical jurisdiction to her
majesty.

“ and persons in England at the passing of the
 “ act having jurisdiction or authority to grant or
 “ revoke probate of wills or letters of adminis-
 “ tration of the effects of deceased persons shall
 “ in respect of such matters absolutely cease, and
 “ no jurisdiction or authority in relation to any
 “ matters or causes testamentary, or to any mat-
 “ ter arising out of or connected with the grant or
 “ revocation of probate or administration, shall
 “ belong to or be exercised by any such court or
 “ person.” And the 4th section provides, that
 “ the voluntary and contentious jurisdiction and
 “ authority in relation to the granting or revok-
 “ ing probate of wills and letters of adminis-
 “ tration of the effects of deceased persons now
 “ vested in or which can be exercised by any
 “ court or person in England, together with full
 “ authority to hear and determine all questions
 “ relating to matters and causes testamentary,
 “ shall belong to and be vested in her majesty,
 “ and shall, except as hereinafter is mentioned,
 “ be exercised in the name of her majesty,
 “ in a court to be called the Court of Probate,
 “ and to hold its ordinary sittings and to have
 “ its principal registry at such place or places in
 “ London or Middlesex as her majesty in council
 “ shall from time to time appoint.”

Court of Pro-
bate.

The 23rd section provides, that “ the Court of
 “ Probate shall be a court of record, and such
 “ court shall have the same powers, and its
 “ grants and orders shall have the same effect
 “ throughout all England, and in relation to

" the personal estate in all parts of England of
 " deceased persons, as the Prerogative Court of
 " the Archbishop of Canterbury and its grants
 " and orders respectively now have in the
 " province of Canterbury, or in the parts of
 " such province within its jurisdiction, and in
 " relation to those matters and causes testamen-
 " tary and those effects of deceased persons
 " which are within the jurisdiction of the said
 " Prerogative Court; and all duties which by
 " statute or otherwise are imposed on or should
 " be performed by ordinaries generally, or on or
 " by the said Prerogative Court, in respect of
 " probates, administrations, or matters or causes
 " testamentary within their respective jurisdic-
 " tions, shall be performed by the Court of
 " Probate: provided that no suits for legacies
 " or suits for the distribution of residues shall
 " be entertained by the court, or by any court
 " or person whose jurisdiction as to matters and
 " causes testamentary is hereby abolished."

By the 5th section it is provided, that " there Judge of the Court of Pro-
bate.
 " shall be one judge of her majesty's Court of
 " Probate."

By the 14th section it is provided, that " there Officers of
the Court of
Probate.
 " shall be three registrars, two record keepers
 " and one sealer for the principal registry of the
 " Court of Probate; and there shall be one
 " district registrar for each district registry; and
 " there shall be so many clerks and other
 " officers for the court and the principal registry

“ as the judge of the court, with the sanction of
 “ the Commissioners of her majesty’s Treasury,
 “ may from time to time think fit.”

And it is also provided, “ that if at any time
 “ it appear to her majesty in council that the
 “ duties of the registrars of the principal registry
 “ of the court can be performed by two registrars,
 “ it shall be lawful for her majesty by order in
 “ council to direct that the number of registrars
 “ for such principal registry be reduced accord-
 “ ingly.”

Districts and
 district regis-
 tries.

The schedule (A.) annexed to the act, and re-
 ferred to in the 13th section, specifies the dis-
 tricts, and places of district registries, in the
 following Table :—

SCHEDULE (A.)

*Districts and Places of District Registries throughout England
 and Wales.*

Districts.	Places of District Registries.
County of Northumberland (a)	Newcastle-on- Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmore- land.	Carlisle.
West Riding of the county of York ..	Wakefield.
North Riding ditto	York.
East Riding ditto (b) including the city of York and Ainsty	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.	Lancaster.

(a) Including the towns and counties of Newcastle-on-
 Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

OF THE COURT OF PROBATE.

5

SCHEDULE (A.)—continued.

Districts.	Places of District Registries.
City of Manchester and hundred of Salford.	Manchester.
Hundred of West Derby in Lancashire..	Liverpool.
County of Chester (c)	Chester.
Counties of Carnarvon and Anglesea ..	Bangor.
Counties of Flint, Denbigh, and Merioneth.	St. Asaph.
County of Derby	Derby.
County of Nottingham (d)	Nottingham.
Counties of Leicester and Rutland ..	Leicester.
County of Lincoln (e)	Lincoln.
Counties of Salop and Montgomery ..	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cambridge (f).	Peterborough.
County of Norfolk (g)	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex.	Ipswich.
Western division of the county of Suffolk	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (h).	Northampton.
County of Warwick (i)	Birmingham.
County of Stafford (k)	Lichfield.
Counties of Radnor, Brecknock, and Hereford.	Hereford.
Counties of Cardigan, Carmarthen (l), and Pembroke (m), with the deaneries of East and West Gower in the county of Glamorgan.	Carmarthen.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth.	Llandaff.

(c) Including the city of Chester.

(d) Including the town of Nottingham.

(e) Including the city of Lincoln.

(f) Including the University of Cambridge.

(g) Including the city of Norwich.

(h) Including the town of Northampton.

(i) Including the city of Coventry.

(k) Including the city of Lichfield.

(l) Including the town of Carmarthen.

(m) Including the town of Haverfordwest.

THE CONSTITUTION AND JURISDICTION

SCHEDULE (A.)—*continued.*

Districts.	Places of District Registries.
County of Worcester (n)	Worcester.
County of Gloucester (o), except the present Bristol County Court district.	Gloucester.
Bristol and Bath present County Court districts.	Bristol.
Counties of Oxford (p), Berks, Bucks ..	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district.	Wells.
Western division of the county of Somerset.	Taunton.
County of Devon (q)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (r)	Blandford.
County of Hants (s)	Winchester.
Eastern division of the county of Sussex (t).	Lewes.
Western division of the County of Sussex	Chichester.
East division of the County of Kent (u).	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the act of the second and third years of King William the Fourth, chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

This table excludes the district of the principal registry (*vide post*).

(n) Including the city of Worcester.

(o) Including the city of Gloucester.

(p) Including the University of Oxford.

(q) Including the city of Exeter.

(r) Including the town of Poole.

(s) Including the town of Southampton and Isle of Wight.

(t) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.

(u) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

The 22nd section provides, that "the judge ^{Seals.}
 " shall cause to be made seals for the Court of
 " Probate, viz., one seal to be used in its prin-
 " cipal registry, and separate seals to be used in
 " the several district registries, and may cause
 " the same respectively from time to time to be
 " broken, altered and renewed at his discretion ;
 " and all probates, letters of administration,
 " orders, and other instruments and exemplifica-
 " tions, and copies thereof, respectively purport-
 " ing to be sealed with any seal of the Court
 " of Probate, shall in all parts of the United
 " Kingdom be received in evidence, without
 " further proof thereof."

We have extracted such of the sections of
 this act as show the jurisdiction, power and
 constitution of the Court generally. But the
 contentious jurisdiction of the Court being no
 part of our present subject, we shall confine
 ourselves to the consideration of the new mode
 of transacting the common form business, or, as
 the term is authoritatively interpreted in the 2nd
 section of the act, "the business of obtaining
 " probate and administration where there is
 " no contention as to the right thereto, including
 " the passing of probates and administrations
 " through the Court of Probate in contentious
 " cases, when the contest is terminated ; and all
 " business of a non-contentious nature to be
 " taken in the Court in matters of testacy and
 " intestacy, not being proceedings in any suit,

Common
form busi-
ness.

Grants by
district re-
gistrars.

“and also the business of lodging caveats against the grant of probate or administration.”

By the 46th section, “probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar, in the name of the Court of Probate, and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same, that the testator or intestate (as the case may be), at the time of his death, had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.”

And by the 47th section it is further provided, that “such affidavit shall be conclusive for the purpose of authorizing the grant by the district registrar of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached, by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or ad-

“ministrator thereunder, notwithstanding the
 “want or defect in such affidavit as is hereby
 “required.”

By the 49th section it is provided, that
 “notice of every application to any district
 “registrar for the grant of probate or adminis-
 “tration, shall be transmitted by such district
 “registrar to the registrars of the principal
 “registry by the next post after such applica-
 “tion shall have been made; and such notice
 “shall specify the name and description, or
 “addition (if any) of the testator or intestate,
 “the time of his death, and the place of his
 “abode at his decease, as stated in the affidavit
 “made in support of such application, and the
 “name of the person by whom the application
 “has been made, and such other particulars as
 “may be directed by rules or orders under this
 “act; and no probate or administration shall
 “be granted in pursuance of such application
 “until such district registrar shall have received
 “a certificate, under the hand of one of the
 “registrars of the principal registry, that
 “no other application appears to have been
 “made in respect of the goods of the same
 “deceased person, which certificate the said
 “registrar of the principal registry shall for-
 “ward, as soon as may be, to the district
 “registrar: all such notices, in respect of ap-
 “plications in the district registries, shall be
 “filed and kept in the principal registry, and

Notice to
 principal re-
 gistry pre-
 paratory to
 grant by dis-
 trict regis-
 trar, &c.

“ the registrars of the principal registry shall,
 “ with reference to every such notice, examine
 “ all notices of such applications which may
 “ have been received from the several other
 “ district registries, and the applications which
 “ may have been made for grants of probate or
 “ administration at the principal registry, so far
 “ as it may appear necessary to ascertain whe-
 “ ther or no application for probate or adminis-
 “ tration in respect of the goods of the same
 “ deceased person may have been made in more
 “ than one registry, and shall communicate
 “ with the district registrars, as occasion may
 “ require, in relation to such applications.”

List of grants
 and copies of
 wills to be
 transmitted
 to the prin-
 cipal registry.

By the 51st section it is provided, that “ on
 “ the first Thursday of every month, or oftener
 “ if required by any rules or orders to be
 “ made in that behalf, every district registrar
 “ shall transmit to the registrars of the principal
 “ registry a list of the grants of probate and
 “ administration made by him up to the last
 “ preceding Saturday, and also a certified copy
 “ of every will to which any such probate or
 “ administration relates,” but the originals of
 which he is directed, by the 52nd section, to file
 and preserve.

Restrictions
 upon the
 district regis-
 trars.

Certain wholesome restrictions are, however,
 placed upon the exercise of the power of the
 district registrars.

In case of
 contention.

By the 48th section it is provided, that “ the
 “ district registrar shall not grant probate or

“ administration in any case in which there is
“ contention as to the grant, until such conten-
“ tion is terminated or disposed of by decree or
“ otherwise, or in which it otherwise appears to
“ him that probate or administration ought not
“ to be granted in common form.”

It would appear that, on the contention being terminated or disposed of, either in the Court of Probate or in a County Court, the district registrar is competent to make a grant of probate or administration in common form. In the event of the contention being carried on and terminated in a County Court, the case is provided for. By the 55th section it is enacted, that “ on a decree being made by a judge of a
“ County Court for the grant or revocation of
“ a probate or administration in any cause (insti-
“ tuted therein under the 54th section,) the re-
“ gistrar of the County Court shall transmit to
“ the district registrar of the district in which it
“ shall have been sworn that the deceased had,
“ at the time of his decease, his fixed place of
“ abode, a certificate under seal of the County
“ Court of such decree having been made; and
“ thereupon, on the application of the party or
“ parties in favour of whom such decree shall
“ have been made, a probate or administration
“ in compliance with such decree shall be issued
“ from such district registry; or, as the case may
“ require, the probate or letters of administra-
“ tion theretofore granted shall be recalled or

“varied by the district registrar, according to the effect of such decree.”

In case of
inopia con-
silii of the
district regis-
trar.

A still more important corrective, viz., to the possible *inopia consilii* of a district registrar, is provided by the 50th section. It is therein enacted, that “in every case, where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the Court of Probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its principal registry, or (if the case be within its jurisdiction) to a County Court.”

The act further provides a means for any applicant for probate or administration declining the jurisdiction of the district registry altogether, by giving to him the option of resorting to the principal registry.

It will have been seen, that the whole of the voluntary jurisdiction and authority in relation to the granting or revoking probates of wills and letters of administration of deceased persons, now vested in or which can be exercised by any court or person in England, is to be vested in and exercised by the Court of Probate, save such as may be exercised by the district registries.

An examination of the Schedule A., at p. 4, will show (by exhaustion, at least), that an ordinary jurisdiction is given to the principal registry in common form business, in all cases where deceased persons, at the time of their several deaths, shall have had a fixed place of abode in the city of London; the counties of Middlesex, Surrey, or Hertford; the Western electoral division of the county of Kent; the Southern electoral division of the county of Essex, or in any part or place out of England. But the jurisdiction of the principal registry is not confined to this; it may be extended, at the will of any applicant, in common form. For by the 59th section it is enacted, that "it shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court; but in every case such application may be made through the principal registry of the Court of Probate wherever the testator or intestate may, at the time of his death, have had his fixed place of abode."

Ordinary jurisdiction of the principal registry.

Option to apply to the principal registry for a grant.

Caveats.

By the 53rd section it is provided, that
“caveats against the grant of probates or ad-
“ministrations may be lodged in the principal
“registry or in any district registry, and (sub-
“ject to any rules or orders under this act) the
“practice and procedure under such caveats in
“the Court of Probate shall (as near as may
“be) correspond with the practice and pro-
“cedure under caveats now in use in the Pre-
“rogative Court of Canterbury; and immedi-
“ately upon a caveat being lodged in any
“district registry, the district registrar shall send
“a copy thereof to the registrars to be entered
“among the caveats in the principal registry;
“and immediately upon a caveat being entered
“in the principal registry, notice thereof shall
“be given to the district registrar of the district
“(if any) in which it is alleged the deceased
“resided at the time of his decease, and to any
“other district registrar to whom it may appear
“to the registrar of the principal registry ex-
“pedient to transmit the same.”

**Administra-
tion of oaths.**

The administration of oaths is provided for
and regulated by the 27th section.

By that section “the registrars and district
“registrars are respectively empowered to ad-
“minister oaths; and all persons who at the
“commencement of the act shall be acting as
“surrogates of any Ecclesiastical Court, and any
“other person whom the judge shall, under the
“seal of the court, from time to time appoint,

“ are respectively empowered to administer oaths
 “ and perform such other duties in reference to
 “ matters and causes testamentary as may be
 “ assigned to them from time to time by the
 “ rules and orders under the act, and the persons
 “ so appointed shall be styled ‘ Commissioners
 “ ‘ of her Majesty’s Court of Probate.’ ” It is fur-
 ther provided by the same section, that “ the same
 “ registrars, district registrars and commission-
 “ ers of the court shall have a like power to
 “ take solemn affirmations or declarations in
 “ the circumstances and manner in which a
 “ person called as a witness, or desiring to make
 “ an affidavit or deposition, would be permitted
 “ to do under the Common Law Procedure Act,
 “ 1854, in cases within the provisions of that
 “ act.”

By the 45th section commissioners for taking oaths in Chancery are also empowered to take oaths in the Court of Probate.

By the 42nd section, “ all proctors actually ^{Practi-}
 “ admitted and practising in the courts in ^{tioners.}
 “ Doctors Commons, in the Prerogative Court
 “ of York, and in the Diocesan and Archi-
 “ diaconal Courts, having previously duly served
 “ under articles of clerkship either to an attorney
 “ or proctor, may upon their application at any
 “ time within one year after the passing of the
 “ act, be admitted proctors of the Court of Pro-
 “ bate without payment of any fee or stamp
 “ duty.” And by the 45th section, “ all solici-

“tors and attornies at law may practise in the
“Court of Probate.”

Stamp duty
on admission
of proctors.

By the 63rd section of the act 20 & 21 Vict.
c. 85, (An Act to amend the Law relating to Di-
vorce and Matrimonial Causes in England,) it is
provided, that “the same amount of stamp duty as
“is now payable on the admission of a proctor (v)
“to any Ecclesiastical Court shall be payable
“by every person to be admitted as a proctor in
“the Court of Divorce and Matrimonial Causes,
“or in the Court of Probate, who shall not have
“been previously admitted as a proctor in the
“other of such courts, or in an Ecclesiastical or
“Admiralty Court, and have paid the stamp duty
“in respect thereof; and every person who shall
“practise as a proctor or as a solicitor or at-
“torney in the said Court of Divorce and Ma-
“trimonial Causes or the said Court of Probate
“shall obtain an annual certificate to authorize
“him so to do under the stamp duty acts, in
“the same manner as proctors practising in the
“Ecclesiastical or Admiralty Courts, and solici-
“tors and attornies practising in her majesty’s
“Courts at Westminster, are now required to
“do by the said acts or any of them, and shall
“be subject and liable to the same penalties and
“disabilities, in case of any neglect to obtain
“such certificates, as such proctors, attornies
“and solicitors are now subject and liable to
“for any similar neglect, and as if the clauses

(v) As to the *status* of proctors prior to the act, see “Law Magazine and Law Review,” Feb. 1856, p. 60.

“ and provisions of the said acts in relation to
“ such certificates had been inserted in this act
“ and specially enacted in reference to proctors,
“ solicitors and attornies practising in the said
“ Court of Divorce and Matrimonial Causes and
“ Court of Probate ; provided that *one* annual
“ certificate only shall be required for any one
“ person, although he may practise in more than
“ one of the capacities aforesaid, or in several
“ of the courts hereinbefore mentioned.”

The 96th section provides, that “ the bill of ^{Taxation of costs.}
“ any proctor, attorney or solicitor for any fees,
“ charges or disbursements in respect of any
“ business transacted in the Court of Probate,
“ whether contentious or otherwise, or any mat-
“ ters connected therewith, shall, as well between
“ proctor or attorney or solicitor and client, as
“ between party and party, be subject to taxation
“ by any one of the registrars of the said court ;
“ and the mode in which any such bill shall be
“ referred for taxation, and by whom the costs
“ of taxation shall be paid, shall be regulated by
“ the rules and orders to be made under the act,
“ and the certificate of the registrar of the
“ amount at which such bill is taxed shall be
“ subject to appeal to the judge of the said
“ court.”

The 94th section makes it lawful “ for any
“ proctor of the Court of Probate to act as the
“ agent of any attorney or solicitor in relation
“ to any matter testamentary, and to allow him

“ to participate in the profits of and incident
“ thereto.”

Fees.

By the 95th section it is provided, that “ the
“ Lord Chancellor (with such assistance as is
“ thereinbefore provided as to rules and orders
“ to be made in pursuance of the act) shall fix
“ a table or tables of fees to be taken by the offi-
“ cers of the Court of Probate, and the proctors,
“ solicitors and attornies practising therein, in-
“ cluding the district registrars and the proctors,
“ solicitors and attornies practising in district
“ registries, and of fees to be taken by the offi-
“ cers of the County Courts in respect of busi-
“ ness under the act, and of fees to be payable
“ in respect of searches, inspection and printed
“ and other copies of and extracts from records,
“ wills and other documents in the custody or
“ under the control of the Court of Probate ;
“ and the judge of the Court of Probate (with
“ such concurrence as is by the act provided in
“ respect of the amendment of rules and orders)
“ is empowered (from time to time after the act
“ shall come into operation) to add to, reduce,
“ alter or amend such table or tables of fees, as
“ he may see fit : provided that such tables of
“ fees and every alteration of the same, except
“ so far as respects the fees which are to be
“ taken by district registrars, proctors and others
“ for their own remuneration and to their own
“ use, shall be subject to the approval of the
“ Commissioners of her majesty’s Treasury ; and

“ every such table of fees, and every addition,
 “ reduction, alteration or amendment to, in or
 “ of the same, shall be published in the ‘ Lon-
 “ ‘ don Gazette,’ and no other fees than those
 “ specified and allowed in such tables of fees
 “ shall be demanded or taken by such officers
 “ and proctors, solicitors and attornies.”

By the 97th section, “ none of the fees pay- Stamps.
 “ able to the officers of the Court of Probate, or
 “ of any County Court, in respect of business
 “ under the act, except the fees of the district
 “ registrars, (which are to be taken as their
 “ remuneration and for their own use,) the fees
 “ of proctors, solicitors and attornies, and such
 “ fees as may be authorized to be taken for their
 “ own use by surrogates and commissioners for
 “ administering oaths, shall be received in
 “ money, but every such fee shall be collected
 “ and received by a stamp denoting the amount
 “ of the fee which otherwise would be payable.”
 The 98th, 99th and 100th sections regulate
 these stamps.

The act also contains certain retrospective Void and
voidable
grants con-
firmed sub
modo.
 enactments, having the effect of remedying the
 inconveniences which would result from a con-
 flict between the extinct and the new testa-
 mentary systems.

By the 86th section it is provided, that “ all
 “ (i. e. unrevoked) grants of probates and ad-
 “ ministrations made before the commencement
 “ of the act, which may be void or voidable by

Further
stamp duty
to be paid
thereon.

“reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants.” And the 87th section enacts, that “legal grants of probate and administration made before the commencement of the act, and grants of probate and administration made legal by the act, shall have the same force and effect as if they had been granted under the act; but in every such case there shall be due and payable to her majesty such further stamp-duty (if any) as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the Court of Chancery; and all bonds taken in respect thereof may be enforced by or under the authority of the Court of Chancery at the discretion of the court.”

Supplemen-
tary grant
for property
not covered.

The 88th section contains the further provision, that “where any probate or administration has been granted before the commencement of the act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted or otherwise not within the operation of the grant, it shall

“ be lawful for the Court of Probate to grant
 “ probate or administration only in respect of
 “ such personal estate not covered by any former
 “ probate or administration, and such grant
 “ may be limited accordingly.”

The 91st section provides, that “ one or more Depository for wills of living persons.
 “ safe and convenient depository or depositories
 “ shall be provided, under the control and direc-
 “ tions of the Court of Probate, for all such wills
 “ of living persons as shall be deposited therein for
 “ safe custody ; and all persons may deposit their
 “ wills in such depository upon payment of such
 “ fees and under such regulations as the judge
 “ shall from time to time by any order direct.”

By the 29th section, “ the practice of the court Practice.
 “ shall, except where otherwise provided by
 “ the act, or by the rules or orders to be from
 “ time to time made under the act, be so far as
 “ the circumstances of the case will admit, ac-
 “ cording to the present practice in the Prero-
 “ gative Court.” This may be safely assumed
 to mean the practice of the Prerogative Court
 of Canterbury, not that of the Prerogative
 Court of York ; the latter court being in no
 part of the act referred to as a guide or ex-
 ample. Upon such assumption we propose to
 act in the following pages.

The 30th and 119th sections provide for the Rules and orders.
 making of rules and orders for regulating
 the procedure and practice of the court, “ to
 “ the intent and end that the latter may be

“ of the most simple and expeditious character.”

So far as the provisions of the act (which has been under our consideration) apply, the grants made by the Court of Probate of England are co-extensive with that part of the United Kingdom only.

But the act “ to amend the law relating to “ probates and letters of administration in Ireland,” passed in the same session of parliament (20 & 21 Vict. c. 79), has provided means for giving to probates and letters of administration, granted by the Courts of Probate in England and Ireland, a reciprocal power of action in each country.

Grants made
in England to
be operative
in Ireland.

By the 94th section of the last-mentioned act it is provided, that “ from and after the “ period at which this act shall come into operation, when any probate or letters of administration to be granted by the Court of “ Probate in England, shall be produced to, “ and a copy thereof deposited with the registrars of the Court of Probate in Ireland, such “ probate or letters of administration shall be “ sealed with the seal of the said last-mentioned “ court, and, being duly stamped, shall be of the “ like force and effect, and have the same operation in Ireland, as if it had been originally “ granted by the Court of Probate in Ireland.”

Grants made
in Ireland to
be operative
in England.

And by the following section of the same act it is provided, that “ from and after the period

“at which this act shall come into operation,
 “when any probate or letters of administration
 “to be granted by the Court of Probate in
 “Ireland, shall be produced to and a copy
 “thereof deposited with the registrars of the
 “Court of Probate in England, such probate
 “or letters of administration shall be sealed
 “with the seal of the last-mentioned court,
 “and, being duly stamped, shall be of the like
 “force and effect, and have the same operation
 “in England, as if it had been originally granted
 “by the Court of Probate in England.”

All personal estate, which a deceased person is beneficially possessed of or entitled to at his death, becomes in that event vested in her majesty, to whom the power of the ordinary has been transferred. The succession so vested in her majesty is to be deputed or delegated by her to one or more person or persons having a title to administration, either by statute, or under the will of the deceased.

The power of granting administration is, as we have seen, to be exercised by the Court of Probate. Administration cannot be assumed either in the case of testacy or intestacy by any individual *ex arbitrio suo*. It is a power which must be applied for and obtained from the court in each case.

There are however a few exceptions to this rule which must be remarked. There are goods of a deceased person, which, to use the

Personal estate not administered by the ordinary.

words of the 13 Edw. 1, c. 19, do not "come to the ordinary to be disposed of," and are not administered by him or under his authority.

Navy pay,
&c., not ex-
ceeding 52*l*.

It is provided by 2 & 3 Will. 4, c. 40, s. 12, (reciting 11 Geo. 4, c. 20, s. 69,) "that all payments not exceeding in the whole thirty-two pounds of pay, half-pay, pension or allowance of deceased officers of the navy and marines, and of widows' pensions, and of allowances from the compassionate fund, and all payments not exceeding in the whole twenty pounds of monies due to any deceased persons on account of prize money, and for the services of deceased non-commissioned officers, drummers and privates of marines to be made under a certificate, [described in the same section,] shall be as effectual and legal as if the same had been made under any probate of a will or letters of administration."

Prize money
not exceed-
ing 20*l*.

Soldier's pen-
sion, prize
money and
pay not ex-
ceeding 50*l*.

And by the 11 Geo. 4 & 1 Will. 4, c. 41, s. 5, it is enacted, that "it shall be lawful for the commissioners of the Hospital at Chelsea with respect to pension or prize money, and for the secretary at war of his own proper authority with respect to pay, to authorize the agent for pensions, or other proper officer charged with the payment thereof, to pay to any person or persons who shall prove him, her or themselves to the satisfaction of such commissioners with respect to pension and prize money, or of the secretary at war with respect to pay, to be the next of kin or legal representative, or otherwise

legally entitled to any pension or prize money, or pay due to any deceased officer, non-commissioned officer, soldier or pensioner, such pension, prize money or pay, provided the same does not exceed *fifty pounds*, although the person so entitled shall not have taken out letters of administration or have procured probate of any will of such deceased officer, non-commissioned officer, soldier or pensioner." And by 2 & 3 Will. 4, c. 53, s. 25, it is further enacted that "it shall be lawful for the commissioners of the said royal hospital at Chelsea to authorize their treasurer or deputy treasurer to pay to any person or persons who shall prove him, her or themselves, to the satisfaction of such commissioners, or of the said treasurer or deputy treasurer, to be the next of kin or legal representative, or otherwise entitled to any share of prize money belonging to any deceased officer, soldier or other person any such share not exceeding *fifty pounds*, although such person shall not have regularly taken out letters of administration to, or have procured the probate of any will of the party originally entitled thereto, to enable him legally to demand such share of prize money." And by the 26th section of the act last referred to it is also enacted that "in all cases of claim for prize money made by the next of kin of foreigners, who shall have been in the pay of his majesty as non-commissioned officers or soldiers, and who shall have died

intestate, it shall be lawful when such next of kin shall reside out of his majesty's dominions for the treasurer or deputy treasurer of the said royal hospital, for the time being, to pay and discharge such claims to such next of kin, or any person or persons duly authorized by such next of kin, to receive the same without requiring the production of letters of administration; and in all cases where such foreign non-commissioned officers or soldiers shall have made wills, it shall be lawful for the said treasurer or deputy treasurer, in like manner to pay and satisfy such claims to the person or persons, who, by inspection of the original will or an authenticated copy thereof, shall appear to be entitled thereto, or to such person or persons as he or she or they shall duly authorize to receive the same, without requiring the production of probates of such wills."

Money and Effects of Merchant Seamen or Apprentices are, in like manner, exempted.

Money and effects of merchant seamen not exceeding 50*l*.

For it is provided by the 199th section of the 17 & 18 Vict. c. 104, ("An Act to amend and consolidate the Acts relating to Merchant Shipping,") that "if the money and effects of any deceased seaman or apprentice paid, delivered or remitted to the Board of Trade or its agents, including the monies received for any part of the said effects which have been sold, either before delivery to the Board of Trade or by its

direction, do not exceed in value *the sum of fifty pounds*, then subject to the provisions hereinafter contained, and to all such deductions for expenses in respect of the seaman or apprentice, or of his said money and effects, as the said Board thinks proper to allow ; the said Board may, if it thinks fit so to do, pay and deliver the said money and effects, either to any claimants who can prove themselves to the satisfaction of the said Board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from any further liability in respect of the money and effects so paid and delivered ; or may, if it thinks fit so to do, require probate or letters of administration or confirmation to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased :” and by the 200th section of the same act, in cases where a deceased merchant seaman or apprentice has left a will which has not been made and attested in the manner required by that section, it is provided that

“ the wages and effects of the deceased shall be dealt with as if no will had been made,” i. e., by the Board of Trade.

Deposit in
Savings'
Bank not
exceeding
50*l.*

By the 10th section of the 7 & 8 Vict. c. 83, (“ An Act to amend the Laws relating to Savings' Banks, and to the Purchase of Government Annuities through the Medium of Savings' Banks,”) it is provided that “ in case any depositor in any savings' bank shall die, leaving any sum of money in the said institution belonging to him or her at the time of his or her death, not exceeding, in the whole, the sum of *fifty pounds*, exclusive of interest, and probate of the will of the deceased depositor or letters of administration of his or her estate and effects is not produced to the trustees or managers of the said institution, or if notice in writing of the existence of a will and intention to prove the same, or to take out letters of administration, is not given to the said trustees or managers within the period of one month from the death of the said depositor; and in the latter case, unless such will is proved or letters of administration taken out within the period of two months from the death of the said depositor, it shall be lawful for the said trustees or managers to pay and divide the same to or amongst any person or persons who shall appear to such trustees or managers to be the widow or entitled to the effects of such deceased depositor accord-

ing to the Statute of Distribution or according to the rules of the institution; and the payment of any such sum of money shall be valid and effective with respect to any demand of any other person or persons as next of kin of such deceased depositor, or as the lawful representative of such depositor, against the funds of such savings' bank or against the trustees and managers thereof; but, nevertheless, such next of kin or representative shall have remedy for recovery of such money so paid as aforesaid against the person or persons who shall have received the same.

A further instance is the deposit (whatever be the amount) left by an illegitimate deceased. Deposit left by an illegitimate person. For by the 11th section it is provided that "if any depositor, being illegitimate, shall die intestate, leaving any person or persons who but for the illegitimacy of such depositor and of such person or persons would be entitled to the money due to such deceased depositor, it shall be lawful for the trustees or managers, with the authority, in writing, of the barrister appointed to certify the rules of savings' banks, to pay the money due to such deceased depositor to any one or more of the persons as in their opinion would have been entitled to the same according to the Statute of Distribution if the said depositor and such person or persons had been legitimate."

It is provided by 13 & 14 Vict. c. 116, s. 40, Sums in

Friendly
Societies not
exceeding
50*l*.

(continued by 17 & 18 Vict. c. 101,) that "when on the death of any member of any certified friendly society, or any certified branch, or of any friendly society already established, any sum not exceeding fifty pounds shall become payable, it shall be lawful for the trustees for the time being of such society, if they shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out of the funds, goods or chattels of such depositor, to pay the same to the widower or widow of such member, as the case may be, or to the child of such member if so directed by any rule of such society or branches; and in case there shall be no such direction, then may pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate without taking out letters of administration in England and Ireland, and without confirmation in Scotland."

In the instances given no legal personal representation is required, although the deceased has left personal estate. But there are other cases of exception, in which the converse of this is adopted, and in these cases a legal personal representation is required, although the deceased has left no personal estate.

Personal
estate ap-
pointed by
will.

If a deceased person has by will exercised a power of appointing personal estate, such will must be proved, although the deceased did not

die possessed of or entitled to any other property save that which is appointed, and although such property is administered neither by the ordinary nor the executor (*a*).

If a deceased person has left personal property, of which he was trustee only, a representation is required, though without respect to the amount of the trust property.

By the 35th section of 48 Geo. 3, c. 149, it is enacted, that "the probate of the will of any person deceased or the letters of administration of the effects of any person deceased, shall be deemed or taken to be valid and available by the executors and administrators of the deceased for recovering, transferring, or assigning any debt or debts or other personal estate or effects, whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee, notwithstanding the amount or value of such debt or other personal estate or effects, or the amount or value of so much thereof, or such interest therein, as was trust property in the deceased (as the case may be), shall not be included in the amount or value of the estate in respect of which the stamp duty was paid on such probate or letters of administration."

So also a personal representation of a deceased person killed by accident must be obtained, in order to bring an action for compen-

(*a*) See Shelford's "Law relating to the Probate, Legacy and Succession Duties," p. 34, *et seq.*

sation, though the amount of such compensation will form no part of the personal estate of the deceased (*b*).

Compensation under Lord Campbell's Act.

It is provided by 9 & 10 Vict. c. 93, s. 2, ("An Act for Compensating the Families of Persons killed by Accident,") that the action (allowed by the act) "shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and *in the name of the executor or administrator of the person deceased*; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death, to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares, as the jury, by their verdict, shall fix and direct."

Customs' fund.

By the 56 Geo. 3, c. 73, ("An Act for Establishing and Regulating a Fund for the Widows, Children and Relatives of Officers, or Persons belonging to the Department of Customs in England,") a fund is established for the benefit and relief of the widows and children and other relatives of the established officers, clerks or other persons em-

(*b*) *Barnes v. Ward*, 2 C. B. 392; *Blake v. Midland Railway Co.*, 21 L. J., Q. B. 233.

ployed in the department of the Customs in England. This general fund is formed by means of poundage deducted from the salaries of these persons, and is administered under rules made by virtue of the act. By these rules a subscriber is empowered to appoint, by will, the particular sum or fund falling due upon his decease, in respect of his subscriptions, but in default thereof the commissioners will divide it, according to the Statute of Distributions, without requiring the production of letters of administration for that purpose (c).

The particular fund does not form part of the deceased's estate.

Where the deceased has left a will, the title of the applicant for a grant is based upon it, as being a direction of the testator himself, which the court obeys or follows.

Amongst such applicants the title of the executor is paramount, and he is preferred by the court to all other persons having an interest in the deceased's personal estate, whether as trustees, legatees or creditors.

In the case of testacy, the instrument granted by the court is called either a probate or letters of administration, with the will annexed.

Where the deceased has not left a will, the grant is made to persons having an interest in his estate by law; and in such case the instrument

(c) Rowsell's Case, "Tilsley's Treatise on the Stamp Laws," p. 685.

granted by the court is called letters of administration.

At whatever period subsequent to the deceased's death, probate and administration are granted, they refer back to the deceased's *death*, by the rule of the civil law, "*omnis hæreditas quamvis postea adeatur, tamen cum tempore mortis continuatur.*"

Nature of
grants.

Grants are either general or limited, original or supplementary; they are also subdivided into those which are restricted to a certain period, to a certain object or purpose, or to a certain property.

CHAPTER II.

GENERAL GRANTS.

SECTION I.

PROBATES.

It has been already intimated, that the executor, ^{Executor} in the case of a will, is *potior jure*, in the ad- ^{*potior jure.*} ministration of his testator's estate.

The executor's title is almost indefeasible, for neither bankruptcy, insolvency, nor felony can bar it.

Accordingly, where an executor (being residuary legatee) cut off a part of a will containing legacies, and thereby attempted to put 500*l.* into his own pocket, and which attempt at fraud he admitted, the court had no option but to decree probate to him with his co-executor (a).

This indefeasibility has been broken into, in a small degree, by the 73rd section of the new act. By that section an executor may be passed

(a) In the goods of *Mary Hill*, 6 Jurist, p. 350.

over, if he be resident out of the United Kingdom at the time of his testator's decease, and there shall appear to the court to be a necessity for or a convenience in making a grant of administration (with the will annexed) to some other person. With this exception, lunacy, idiocy and mental imbecility are the only grounds upon which an executor may be excluded from probate (*b*).

As not only the title of the executor is founded upon his testator's will, but as the latter also contains the specific rules and limits of his conduct in the administration of the estate, it is obvious that a proceeding should be required of him which shall procure for it a legal stamp and currency, and a confirmation of his title.

Proving a will.

This proceeding is called proving a will, and is conducted as follows. The executor is sworn or affirmed (as the case may be) to the truth and due performance of the will, and he also makes an affidavit or affirmation as to the amount of the gross personal estate of his testator for the use and purposes of the Commissioners of Stamps.

Affidavit of property.

By the 38th section of the 55 Geo. 3, c. 184, it is enacted, "that from and after the expiration of three calendar months from the passing of this act, no Ecclesiastical Court or person shall grant probate of the will or letters of adminis-

(*b*) *Evans v. Tyler*, 2 Robertson, p. 131; and *vide* grants for use and benefit, *post*.

tration of the estate and effects of any person deceased without first requiring and receiving from the person or persons applying for the probate or letters of administration, *or from some other competent person or persons* an affidavit, or solemn affirmation in the case of Quakers, that the estate and effects of the deceased, for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have been possessed of or entitled to, as a trustee for any other person or persons, and not beneficially, but including the leasehold estates for years of the deceased, whether absolute or determinable on lives, if any, *and without deducting anything on account of the debts due and owing from the deceased*, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased." And by the 39th section it is provided, that "every such affidavit or affirmation shall be exempt from stamp duty, and shall be transmitted to the Commissioners of Stamps, together with the copy of the will, or extract or account of the letters of administra-

tion to which it shall relate, by the registrar or other officer of the court, whose duty it shall be to transmit copies of wills and extracts or accounts of letters of administration to the said Commissioners, for the better collection of the duties on legacies and successions to personal estate upon intestacy, and if any registrar or other officer, whose duty it shall be, shall neglect to transmit such affidavit or affirmation to the said Commissioners of Stamps as hereby directed, every person so offending shall forfeit the sum of fifty pounds."

Duplicate
will.

If the will exists in duplicate the executors may prove one part without being required to lodge the other. But it would seem that, if the will purported to be so executed, it might be an act of caution on the part of the registrar to inquire if both parts were in existence, and (should one of them not be forthcoming) to inquire if the part brought in for probate was in the testator's possession at the time of his decease.

Codicils
proved with
will.

If there be a codicil or codicils, such codicil or codicils must be proved with the will.

Exception.

There is an exception to this rule where a codicil is litigated, which in no way alters the appointment of executors, and where there is a necessity or a reason for administering the estate *pro tanto* without delay (c).

(c) Lord Sondes, June, 1836; also James Boatwright, December, 1835; Sir James H. Craig, March, 1812; and Henry Hope, March, 1812. In the goods of *Peter Couchet*,

In such a case probate is granted of a will alone to the executors therein named, the question of the validity of any codicil thereto being reserved. Such a probate of course does not empower the executor to distribute the residue of the estate (*d*). Probate of will without a litigated codicil.

If there be several executors one may prove alone without notice to the others, and in this case a power is reserved by the court to grant probate to the latter whenever they or any of them shall duly apply for the same. Power reserved to other executors to prove.

But this reservation of power can only be made to an executor who is equal in degree. Therefore, when an executor for life takes probate, power is not reserved to the executor substituted upon his decease.

Where a *feme covert* is appointed an executrix of a will, the court, without notice to the husband, allows her to obtain probate of the will, and she takes it without either his consent or conjunction. But where a husband dissented the court excluded a *feme covert* executrix, and granted probate to her co-executor without her (*e*). Feme executrix taking probate.

The court will grant probate to one executor on the renunciation of the other. Probate refused on husband dissenting.

the court granted probate of a will in common form without any reference to a disputed codicil (June, 1828). See also *Reay v. Cowcher*, 2 Hagg. 249.

(*d*) Vide "The Law Magazine and Law Review, November, 1857," p. 101.

(*e*) *Pemberton and M'Gill by his attorney v. M'Gill*, 11th December, 1855.

The court will grant probate to all executors, no matter what the number may be.

Co-executors swearing the estate under different amounts.

If two executors of a will swear the estates under different amounts, the court grants probate to both under the higher sum.

Probate of authentic copy of will.

We have spoken in the foregoing observations of original wills, but if the will have been previously proved and deposited in the court of another jurisdiction, it is competent to the executor to prove an authentic copy, *i. e.*, an exemplification or office copy, *loco originalis*.

The court is also accustomed to call for evidence (by affidavit) in support or elucidation of a will, if it suspects a defect in its execution (*e*), or if there be interpolations, erasures or alterations, not sufficiently attested.

The court will also include in its probate any papers incorporated in the will by the testator's reference (*vide post*).

When all preliminaries of these kinds have been done and settled to the satisfaction of the court, probate of the will is granted and issued under the seal of the court.

Probate.

Probate (as the Master of the Rolls observed

(*e*) If the execution of a will appears by an affidavit of the attesting witnesses to have been invalid, it is usual, before taking probate of one earlier in date, or taking letters of administration of the effects of the deceased person as dying intestate, to move the court, upon such affidavit for probate, and to take the rejection of the motion, *quasi* a sanction for applying for administration afterwards.

in *Matson v. Swift* (f)), has a "twofold office, which, besides granting administration, authenticates the will, and is evidence of the character of the executor."

The probate granted to executors whose appointment is general and absolute, is also itself ^{General probate.} general and absolute in its powers. It extends over all personal estate situate within the reach of the court, and does not terminate even, necessarily by the death of the executors, but may be continued, as we shall see, to an indefinite period, by the chain of executorship.

If the executor be appointed during his life, or the executrix be appointed during her widow- ^{Probate during life or widowhood.} hood, the same absolute powers are given, but care is taken to show the limitation of the appointment.

It generally happens that when an executor is appointed during life, or an executrix during widowhood, another executor is also appointed, whose office is to take effect upon the death of the executor, or the re-marriage of the executrix. The probate which has been granted, as we have before described, ceases upon the death of the executor or the marriage of the executrix, and the executor, whose office then commences, may obtain a new probate to be granted to him.

The court will not grant probate before seven ^{When probate granted.}

(f) 14 Law J. R. (N. S.), Chanc. 354; 8 Beav. 368.

days have fully elapsed from the testator's death, *i. e.*, a probate may issue on the eighth day after his death, the day of his death being included. It would seem, however, that for special causes the court, on cause being shown, would relax the rule. One of such causes would be the perishable nature of the testator's estate and effects. This rule also applies to administration, with the will annexed.

Separate
probate of
codicil.

If a codicil have been discovered at a period subsequent to probate of a will being taken, a separate probate of that codicil will be granted to the executor, provided it in no way repeals or alters the appointment of executors already made in the will (*g*). If different executors are appointed by the codicil, the probate of the will must be brought in and revoked, and a new probate granted of the will and codicil together (*h*).

The executor is sworn *ut ante*.

Probate of
earlier will.

It is most usual, as may be supposed, for the court to grant probate of the will latest in date; but if the parties interested under such will have been cited to propound it and do not do so, the court grants probate in common form of the one preceding it in date (*i*).

(*g*) *Langdon v. Rooke*, 1 Notes of Cases, p. 254; *Wm. Beeton*, 6 Notes of Cases, p. 13.

(*h*) *Vide post*, "Revocations."

(*i*) *Palmer and Brown v. Dent and others*, 7 Notes of Cases, p. 556.

It is provided by 11 Geo. 4 and 1 Will. 4, c. 20, s. 48, that no will made by any petty officer or seaman, non-commissioned officer of marines or marine, shall be valid to pay any wages, prize-money, or other monies payable in respect of services in her majesty's navy, unless certain requirements set forth in the act shall have been complied with.

Probate of wills of petty officer or seaman, non-commissioned officer of marines or marine.

And it is further provided by the 51st section of the same act, that before any will shall be attempted to be acted upon, or put in force, the same shall be sent to the treasurer of the navy, at the Navy Pay Office, London, in order that it may be examined by the inspector of seamen's wills; and, if there shall be no reason, upon such examination, to doubt its authenticity, he or his assistant shall sign his name thereto, and also put a stamp thereon, in token of his approbation thereof.

By the 55th section, the inspector of seamen's wills is directed to note upon the will the amount of the wages due to the deceased, and then to forward it to a proctor, in order to his obtaining probate thereof.

Under these circumstances, a general probate of the will is granted by the court.

It is also usual for the court, upon its being notified by the inspector of seamen's wills, that there are no wages, prize-money, or other monies due in respect of the deceased's services in her majesty's navy, to grant a general probate of

the will of any petty officer, seaman, non-commissioned officer of marines or marine, although the execution of the will may be invalid, so far as relates to wages, prize-money or other monies payable in respect of services in her majesty's navy. But this is manifestly a wrong and illegal practice (*k*).

Chain or transmission of executorship.

Transmission upwards.

The probate does not necessarily expire with the death of the grantee. An executor having taken probate of his own testator's will becomes executor, *ipso facto*, not only of the latter, but also of the will of any other testator, of whom he was sole or surviving executor, or so on, *ad infinitum*, upwards (*l*).

The condition of this rule, however, is, that the will of each testator shall have been duly proved in the same court (*m*).

Transmission downwards.

The office of executor is transmissible downwards equally, *ad infinitum*, provided the same condition be observed, viz., that his executor make a will, which shall be afterwards duly proved, and in each case the chain of representation is taken up or handed down, not only in the case of a sole executor but of many, where the survivor of them dies testate (*n*).

(*k*) See probates save and except, and limited administrations.

(*l*) *J. Perry*, 2 Curt. 655.

(*m*) *Jermyn v. Baxter*, 5 Sim. 568; *contra*, *Fowler v. Richards*, 5 Russell's Chanc. Rep. 39.

(*n*) *W. Smith*, 3 Curt. 81.

The executorship of the will of a *feme covert* (made under a power, or with the *consent* of her husband), may be carried *downwards from her*, through her executor, to the same extent and under the same conditions as any other executorship (*o*). This is, perhaps, sufficiently obvious of itself, and might require no explanation.

Transmission of executorship of will of *feme covert* downwards.

But the Ecclesiastical Court has of late years unaccountably failed to recognize the converse as law, viz., the extension of the chain of executorship *upwards, through the medium* of a *feme covert* executrix who has made her will, by virtue of a power, and has appointed an executor. In that case the court has in its latter practice issued grants with the will annexed *de bonis non* of the testator, of whose will she was executrix, to other parties, upon the assumption that the executor of the will of a *feme covert* made by virtue of a power, and for the disposition of property thereunder, is correspondingly limited in his rights, that the latter do not extend beyond his own testatrix's goods, and that his appointment may therefore be held to make a breach in a chain of representation *upwards*.

Transmission of executorship, through *feme* executrix upwards.

The correctness of this latter practice of the Ecclesiastical Court may justly be doubted. The weight of authorities is decidedly in favour of the opinion that the chain of representation is legally extended *upwards through* such an

(*o*) *R. Beer*, 2 Robertson, 351.

executrix, and the former practice of the court goes to the same effect (*p*).

Mr. Justice Williams says, "a married woman being executrix may continue the chain of representation by making her own executor" (*q*). And elsewhere he observes, "since the husband has no beneficial interest in the personal estate which the wife takes in the character of executrix, and as the law permits her to take upon herself that office, it enables her in exception to that general rule, that a married woman cannot dispose of property, to make a will in this instance without the consent of her husband, restricted however to those articles, to which she is entitled as executrix. The effect of such an instrument is merely to pass, by a pure right of representation, to the testator or prior owner, such of his personal assets as remain outstanding, and no beneficial interest which the wife may have in any part of them: and with respect to the assets which may have been received by the *feme* executrix during the marriage and not disposed of, they immediately become the husband's property, and are not affected by the will" (*r*).

If therefore a *feme* executrix may by the common law make a will and appoint an exe-

(*p*) *Birkett v. Vandercom*, 3 Hagg. E. R. 750.

(*q*) *Law of Executors*, part 1, book 3, chap. 4.

(*r*) Part 1, book 2, chap. 1, sect. 2.

cutor of such will, it would seem reasonable to suppose that she does not lose this right merely by making a will ostensibly in pursuance only of a special power given to her for that purpose, or by virtue of the consent of her husband.

This was affirmed in *Barr v. Carter* (s), where the Master of the Rolls laid down that "a *feme covert*, with the consent of her husband, may make a complete will of personal estate, and may appoint a general executor, who will in that case be the general representative not only of the *feme covert*, but of any testator of whose will the *feme covert* was executrix." And the decision in *Scammell v. Wilkinson* (t), was based upon the assumption that the executor of a will, made by virtue of a power, is also executor of the goods which a testatrix has *en autre droit*, viz., as executrix (u).

The assumption before referred to, of the Ecclesiastical Court, which I must venture to call erroneous, has been fostered also by its own practice in respect to grants of probate of the wills of *femes couvertes*. As almost universally these wills are proved only for the sake of the property which the testatrices had a right by a power, or their husband's consent, to dispose of, and which they have disposed of by such wills in virtue of such right or consent, the court, in

(s) 2 Cox, 429.

(t) 2 East, 558.

(u) See also *Stevens v. Bagwell*, 15 Ves. 155, 156.

granting probate, and the executors in applying for it, leave out of consideration the property, of which the testatrixes have been possessed, *en autre droit*, as executrixes themselves. And, in consequence of this neglect or forgetfulness, probates of such wills have, in late years, been issued, limited exclusively to the goods over which the testatrixes have had a disposing or appointing power (*vide post*). In *Birkett v. Vandercom*, the court, on being specially applied to under circumstances such as are now under consideration, added, without hesitation, a further power in the probate, enabling the executor of the testatrix (who had made her will by virtue of a power) to become the legal personal representative of the testator, whose surviving executor she had been (*x*).

The court observed, "I cannot see on what principle the executorship is not continued" (*y*). As there can be no doubt about the law applicable to such cases, and as the doubt thrown upon them has arisen from an insufficient mode of practice, it might seem advisable for the future, that words similar to those which were directed to be used in *Birkett v. Vandercom*, (*vide post*,) should be employed in all cases where a *feme* executrix has exercised her right at law of appointing an executor of goods possessed by

(*x*) *Vide post*, "Limited Probates."

(*y*) *Birkett v. Vandercom*, 3 Hagg. E. R. 751.

her, *en autre droit*, in her character of executrix merely (z).

It is not clear whether an executor, proving by his attorney, continues the chain of executorship or not (a); but it seems consonant to law that this should operate as transmitting it.

If the executor be appointed for his life, his office is not transmissible to his own executor; and the same observation applies to the case where an executor is appointed to act only until a specified event or contingency shall take place.

Executorship not transmitted.

An executrix appointed during widowhood, and dying a widow, transmits the executorship

(z) In *Scammell v. Wilkinson*, 2 East, 558, 559, the court said, "but as Mrs. Pearse, besides what she could dispose of by the will of her husband, to which the limited probate is confined, had a power to make a testament and appoint an executor of the goods she had, as executrix to which that probate does not extend, *the probate to be granted in this case may be more extensive* than what the plaintiffs insist it should be. But of that it will be to be judged by the proper court when *such further limited probate* is applied for." No further limited probate, however, was applied for, nor was the existing probate extended. (Sarah Pearse, deceased, March, 1789.) Perhaps it was and would be unnecessary. The right is in the executor, and his appointment is shown by the probate whether that instrument be general or limited. The court, of its own authority, cannot put bounds upon the rights of an executor who is otherwise unlimited.

(a) *William Bayard*, 7 Notes of Cases, p. 118, and 1 Robertson, 770.

to her own executors (b). But, upon her re-marriage, the probate granted to her ceases, she having no power of transmitting the executorship in that event.

Upon this subject a very important change of law has been introduced by the new act. The effect of the 79th section (vide Renunciation), is to continue the chain through the survivor of the acting executors, notwithstanding the renunciant executor may be the actual survivor of all. For by the construction of the concluding words, a renunciation of probate will operate in the sense of expunging the executor's name from the will. The right of transmission by survivorship is thus given to the proving executors.

We fear that the burthen of executorship will be rendered intolerable by the new act, though we do not suppose that there could be any intention on the part of our legislators to make it so. For by the 86th section, "all (*i. e.* unrevoked) grants of probates and administrations made before the commencement of this act, which may be void, or voidable by reason only that the courts from which respectively the same were obtained, had not jurisdiction to make such grants, shall be *as valid as if the same* had been obtained from courts entitled to make such grants."

(b) *Bond v. Faikney*, 2 Lee, 371.

And the 87th section enacts, that "Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration made legal by this act, shall have the same force and effect as if they had been granted under this act."

Those exceptions, therefore, which the policy of the law had created, are now entirely removed. And as the retrospective relation given to a probate is without limit, so its prospective operation may be equally boundless.

Thus a transmitted personal representation may neither have a perceptible beginning nor a calculable ending (c), and the effect of the 94th and 95th sections of the Irish Probates and Administrations Act, is to make the *onus* more intolerable, by facilitating the Anglicization of Irish probates.



SECTION II.

LETTERS OF ADMINISTRATION, WITH THE WILL ANNEXED.

It has already appeared that the will must be proved by the executor, and probate be granted to him: but a will may be proved by other persons, and a grant of administration, with the

Administra-
tion (will).

(c) See "Law Magazine," vol. 54, p. 110.

will annexed, will be made to them, under the following conditions :—

1. If no executor has been appointed by the testator.
2. If the executor appointed by the testator has died, either in his lifetime, or after his death without proving.
3. If the executor has renounced, or been cited by the usual process of the court, and has not appeared.
4. Or, where the court shall use the discretion given to it by the 73rd clause of the 20 & 21 Vict. c. 77. (Vide *post.*)

To universal
or residuary
legatee in
trust.

Under any one of these conditions, the court will grant letters of administration, with the will annexed, of all and singular the goods, chattels, and credits of the testator, to the universal or residuary legatee or legatees in trust, or any one of them (*d*).

The court will not ordinarily grant to a residuary or universal legatee in trust, in that character, if he, being executor also, has renounced the probate, *quâ* executor. The court will not permit him to make his election in taking an original grant (*e*).

(*d*) Formerly the court would not grant to any *one* of several universal or residuary legatees in trust, unless the other or others renounced or consented.

(*e*) Where an executor, being also residuary legatee in trust, has renounced, and administration (with will) has been granted in consequence of such renunciation, the court (pro-

If the residuary or universal legatee in trust has power, under the will, to nominate a trustee in his stead, the court will grant to the substituted trustee, on the renunciation of the trustee named in the will. The deed of nomination is produced.

To trustee
appointed by
residuary
legatee in
trust.

If there be no residuary or universal legatee in trust, the court will grant to the beneficial universal or residuary legatee. The court prefers the latter to the testator's next of kin, notwithstanding the statute (*f*). He is also preferred to pecuniary legatees or annuitants (*g*).

To universal
or residuary
legatee.

The reason for this preference of the residuary legatee is nowhere clearly stated, but it would seem to be this:—The residuary legatee, inasmuch as his bequest can have no realization until all the debts and all the other legacies have been paid, is influenced above all other legatees, if honestly inclined, in effecting a faithful and

bably on sufficient cause being shown) has allowed him, on the death of the administrator (with will) to take administration (with will) of the unadministered goods: but this must be regarded as a deviation from the usual practice of the court. In the goods of *Rebecca Bullock*, 4 Notes of Cases, p. 645. See also "Retraction," *post*.

(*f*) *Taylor v. Diplock*, 2 Phill. 276; *West and Smith v. Wilby*, 3 Phill. 381. Oddly enough, the practice of the Ecclesiastical Court, in granting administration (will) to a residuary legatee (or party having the interest), instead of granting it to a next of kin (or party having no interest), as the 21 Hen. 8 commanded, is now legalized by the 73rd section of the new act.

(*g*) *Atkinson v. Lady Anne Barnard*, 2 Phill. 320.

complete administration of the estate; and, inasmuch as the amount of his legacy is vague and uncertain until the whole of the effects are got in, and the debts and legacies paid, he feels in that a spur towards the settlement of the estate which can actuate no other legatee.

Sir J. Nichol observes, "The residuary legatee is the testator's choice; he is the next person in his election to the executors" (*h*).

Or, perhaps, the reason with the court may be, that the residuary legatee stands *loco hæredis*, for, though he has not the official powers of the *hæres*, they having been transferred to the executor, he has his beneficial interest in the estate.

To residuary
legatee for
life.

If the residuary estate be given to one for life, and afterwards to another, the residuary legatee for life is entitled to the grant in preference to the residuary legatee substituted at his death; but if he die or renounce, or, being cited, refuses, by non-appearance to the process, the grant will be made to the substituted residuary legatee.

To appointee
of residuary
legatee for
life, with
power, &c.

A residuary legatee for life may have a power of appointing the residue, by will or otherwise. If such power be exercised, next to the residuary legatee for life the appointees are entitled in the same manner as if they had been substituted by the original testator, and their title is shown by reference to the will or deed in

(*h*) *Atkinson v. Lady Anne Barnard*, 2 Phill. 317.

which the power of appointment is exercised. The personal representative of an absolute residuary legatee is entitled to take, should the interest of the latter have vested by survivorship, or, being a child of the testator, under the 33rd section of the Wills Act.

If there be several residuary legatees, any one may take without the consent of or notice to the other.

Rules in making grants to residuary legatees.

If the residue be given to two persons, and the share of one of them has lapsed to the testator's next of kin, the grant is made to the residuary legatee, or to the next of kin, whichever first applies.

A residuary legatee, taking one portion of the residue absolutely, is entitled to the grant before a residuary legatee who has a life interest only in the other.

If there have been appointed two or more residuary legatees, the personal representative of any one of them, who may be dead, may not take unless the other residuary legatee or legatees are also dead or renounce.

If the residue be given to two persons for life with substitutions, and one of them be dead, their survivor is generally preferred to the substituted residuary legatee.

If all the residuary legatees be dead, the representative of one has no preference over the representative of another.

And it is almost superfluous to say that the

representative of a sole residuary legatee stands in precisely the same position as the deceased whom he represents (*i*).

If the residue be left to such only of the testator's children as shall attain twenty-one years, so as not to vest until then, but the interest and profits be directed in the meantime to be applied to their maintenance, the court will make a grant to their guardian (*k*); and will do so in preference to making a grant to a residuary legatee substituted on the contingency of all the other residuary legatees dying before their legacy shall have vested.

To testator's
next of kin.

If there be an ambiguity as to the disposition of the residue, and the persons benefited under such ambiguous disposition are the next of kin and so entitled to the residue if the same be undisposed of, the grant is made to them, as being the next of kin, and "interested in the residue."

When the bequest of the residuary estate is lapsed or is void for remoteness, or where the residuary legatee has renounced, the testator's next of kin take.

Where the residuary legatees cannot be found or heard of, the court will grant to the next of kin (*l*).

(*i*) The representative of a residuary legatee for life has no interest; *Wetdrill v. Wright*, 2 Phill. 248.

(*k*) Vide *post*.

(*l*) *Cull v. Guillerme*, 12 Jurist, 966.

Where a residuary legatee has assigned all his right and interest in and to the residuary estate, the assignee, on the renunciation or refusal of the executor and the residuary legatee, may take administration (will) (m). To assignee by voluntary assignment.

The same observation applies in the case of a pecuniary legacy assigned by the legatee to another.

The court grants administration (will) to a legatee on the renunciation or refusal of the residuary legatee. To legatee.

And in like manner, if the residue has lapsed or is undisposed of in the will, the Court will grant to a legatee on the renunciation or refusal of the next of kin, and persons entitled under the Statutes of Distribution.

When a woman under coverture makes a will either by virtue of a power for such purpose given to her, by the consent of her husband, or by reason of her having a separate estate, a general grant of administration (will) may be had under any of the following conditions :— Administration (will) of feme covert.

If the husband be appointed executor solely he may take a grant of all the deceased's personal estate, namely, of that over which she has a disposing or appointing power by her will

(m) *Mary Newstead*, 1 Curt. 593 ; *Mary Jane Burton*, 7th August, 1856. Here the executor renounced, and the residuary legatee was cited to show cause.

of which he is executor, and of that of which she has no disposing or appointing power, and concerning which she is dead, intestate, and which he as husband is entitled to administer; or if he be appointed with others and acts, a similar grant may be made to himself and co-executors.

If he be not appointed executor, but will consent, such a grant of *all* the deceased's effects may be made to the executors.

If there be no executors and the husband be appointed universal or residuary legatee, he may take general administration (will), that is, of all the deceased's effects; or, on his consent, such a grant may be made to another person who is appointed universal or residuary legatee, or, if there is no residuary legatee, to the principal legatee.

If the husband has survived the testatrix and died, the consent of his personal representative will operate in the same way.

If the husband be appointed executor jointly with another and elect to take general administration with the will annexed, the other executor must either join, or renounce or refuse, for the court cannot reserve power of granting administration with will annexed.

So, if the husband, not being an executor, consent to a general grant being made to his wife's executors, all must take administra-

tion (will), for no power can be reserved in this case for the same reason.

The executor who does not apply must be cited before the court will exclude him, and if administration (will) be once granted he cannot take probate.

By the former practice of the court the husband was entitled to take a general grant of administration (will) to his wife if there were no executor, or the executor had renounced (*o*), notwithstanding the residuary legatee or a legatee applied for a limited grant. But in *Dawson*, deceased (*p*), although the grant was made to the husband the court observed, "had there been another party applying for the grant, I should have required the question to be argued." Laterly the court has preferred granting a limited administration (will) to the residuary legatee.

It may be remarked in this place, that, as a general rule, in all grants the court follows the beneficial interest. "To couple the grant," said Dr. Lushington, *Brenchley v. Lynn* (*q*), "with the interest, is, for the most part, one of the leading principles of this court; and, as I

(*o*) *Salmon and Breese v. Hays*, 4 Hagg: 386. In the goods of *Dawson*, 2 Robertson, 136; 7 Notes of Cases, p. 317, the grant was made to the husband agreeably to the old practice under the particular circumstances of the case.

(*p*) 2 Robertson, 137.

(*q*) *Jurist*, 16, 292, and 2 Robertson, 470.

"think, one of the safest principles on which it "can go." The only exception to this general rule is, when there is a statutable right.

In one case the court granted administration (will) of a *feme covert* to the husband's personal representative, the legatees, under the will, having been cited (r).

If a *feme covert*, having made a will during her coverture, has survived her husband, and has subsequently died a widow, without having republished it, a general administration (will) will be granted to her executor or residuary legatee, on the consent of her next of kin, who are the persons entitled to all her property, concerning which she is dead intestate.

To creditors. A creditor may take administration (will), on the renunciation or refusal of the executor and residuary legatee.

The court will grant to a creditor in equity (s).

The executor of a testator, having possessed himself of assets, and paid debts and some legacies, died, without having paid the applicant his legacy. The court granted administration (will) of the goods of the executor to such legatee as a creditor (t).

To assignees
of bankrupt
testator.

If the testator has died a bankrupt or insolvent, the court will grant administration (will)

(r) *Dempsey v. Kiog*, 2 Robertson, 397.

(s) *Vide* "Administrations and Administrations de bonis non, *post*."

(t) *W. Truss*, 15 Jan. 1855.

to his assignee, on the renunciation of the executor and residuary legatee.

So, the assignee of the residuary legatee, who Or bankrupt residuary legatee. is a bankrupt or insolvent, is entitled to administration (will) of his testator, on the executors and residuary legatee renouncing, or being cited and not appearing.

The court will grant to a person having a derivative To person having a derivative interest. interest in the deceased's estate, from the estate of another deceased, but of whom he cannot become the legal personal representative. For instance, if a residuary legatee under a will die, and his executor renounce the letters of administration (with such will annexed), the residuary legatee under the will of the residuary legatee may, *per saltum*, take a grant of administration (with the original testator's will annexed), without representing his own testator.

The court will grant administration (with the will annexed), to a person having a *spes successionis* To person having a spes successionis. (u).

In "*Hinckley*," deceased, the court granted administration (with the will annexed), to the next of kin of the next of kin of the testator. The latter, who as the grandmother and sole next of kin, took the lapsed residuary estate, renouncing and consenting (x).

By the 73rd section of the new act, it is provided (*inter alia*) that where a person has died Administration (will) under 20 &

(u) Vide *post*.

(x) 1 Hagg. E. R. 477.

21 Vict. c. 77, or shall die, leaving a will affecting personal estate, but without having appointed an executor thereof, willing and competent to take probate; or where the executor shall, at the time of the death of such person, be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who, if this act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person, to the person who, if this act had not passed, would by law have been entitled to a grant thereof; but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct; and every such administration may be limited as the court shall think fit (*x*).

(*x*) See "Administrations," and "Limited Administrations," *post*.

SECTION III.

INCORPORATION OF PAPERS BY REFERENCE, ETC.

The court will not restrict itself to grant probate of a will and codicils alone. But where a testator, by his will or codicil, expressly refers to any other documents, such as deeds, wills or codicils, of himself or of other persons, or even refers to papers void or invalid *per se* (y), as carrying out or containing his own dispositions, such documents and papers are considered to be incorporated in and to form part of the will, and are included by the court in the probate.

Incorporation of papers by reference.

Where a testator by his will bequeathed property upon the same trusts for the same purposes, and subject to the same provisoes and restrictions as were mentioned in a certain deed of settlement, such settlement was proved with the will and included in the probate (z).

In *Lord Keith's* case, the testator's English property being given by him in his will, upon the same trusts as his property in Scotland, and the deed of settlement being referred to by the will, was admitted to probate as part of it (a).

(y) *Sheldon v. Sheldon*, 3 Notes of Cases, p. 256.

(z) *Thomas Dickins*, 1 Notes of Cases, p. 399; *Wm. Frederick Pewtner*, 4 Notes of Cases, p. 479.

(a) Referred to by Dr. Lushington in *Sheldon v. Sheldon*, 3 Notes of Cases, p. 254.

Of the will of
another per-
son.

The will of a testatrix's father having been referred to by her in her will, as containing the names of persons to whom she wished to bequeath a part of her estate, an office copy of the first-mentioned will was required to be proved by the executor as part of the testatrix's will, and was included in the probate accordingly (*b*).

Of the re-
voked will of
another per-
son.

Where a testatrix in her will referred to a revoked will of her late husband, as containing the trusts, and purposes to which she wished her own property to be applied, such revoked will was admitted to probate as part of her own (*c*).

Of a former
will of a
testator.

Where a testator in his last will referred to a former will of his own, put up therewith so far as any of the provisions therein contained, might be applicable to existing circumstances at the time *of his death*, &c., such former will was admitted to probate, together with the last will of the testator (*d*).

Of papers in-
valid *per se*.

If a testator in his will distinctly refers to an unexecuted, unattested, or invalid paper (*e*), even a mere schedule or catalogue (*f*), the latter are admitted to probate as part of the will.

(*b*) *Emma Darby*, 4 Notes of Cases, p. 428.

(*c*) *Countess of Durham*, 1 Notes of Cases, p. 368.

(*d*) *James Gordon Duff*, 4 Notes of Cases, p. 474.

(*e*) *Francis Willesford*, 3 Curt. 77; *Thomas Smartt*, 4 Notes of Cases, p. 38; *Countess Ferraris v. Lord Hertford*, 3 Curt. 468.

(*f*) *R. M. Bacon*, 3 Notes of Cases, p. 645.

So, if a testator by a codicil duly executed, refers to a prior one not duly attested, the latter is admissible to probate (*g*).

So, if a testator duly make and execute a codicil, referring to his will, which was unduly executed, the will is entitled to probate (*h*).

In the case of deeds, as well as of documents not valid *per se*, the court requires ^{Originals of deed produced, &c.} the original to be produced. In the case of a deed, it will permit it to be delivered over to the trustees after probate, it having been duly registered.

But the court will also permit a notarial copy ^{Notarial copy of deed proved.} of a deed to be brought in and proved (*i*). And occasionally, where the deed is in the hands of a person who will not part with it, the court having no power to enforce its production, will decree probate without it (*k*). But if the paper in question be invalid and inoperative *per se*, and made probative by reference only, the court will enforce its production by monition, for such a paper, unlike a deed, must be proved, *ex necessitate*, in order to give it operation and legal existence (*l*).

(*g*) *J. F. Smith*, 2 Curt. 796; *Ingolby v. Ingolby*, 4 Notes of Cases, p. 493.

(*h*) *W. Claringbull*, 3 Notes of Cases, p. 1; *E. Hill*, 4 Notes of Cases, p. 404.

(*i*) *Thomas Dickins*, 1 Notes of Cases, p. 399.

(*k*) *Thos. Battersbee*, 2 Robertson, 440.

(*l*) *Sheldon v. Sheldon*, 3 Notes of Cases, p. 257.

Production
of testamen-
tary papers.

The 26th section of the new act provides means for compelling the production of testamentary papers. By that clause it is enacted, that "the Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person. And if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same; and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not answering such questions or interrogatories, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the court, and had

made such default, and the costs of such motion, petition, or other proceeding, shall be in the discretion of the court."

The oath of office taken by the executor or administrator is considered to prove only the Adminicula proof of a will. general validity or genuineness of the will or codicil, or, in other words, it only identifies them as the testator's acts; and is not considered to bar the court, even in its common form, from requiring direct and specific evidence from other sources, upon any point or particular which, by raising a presumption against the instrument itself or any part of it, or by exciting a suspicion in the mind of the court, calls for rebuttal or explanation.

The subsidiary evidence which the court may feel itself bound to call for, will necessarily depend upon the category to which the will or codicil in question is to be referred, under the Wills Act of 1838, viz., whether the testator has been a soldier, a sailor, or a civilian, and the nature of the evidence will be adapted to the requirements of each section of the act.

The attestation clause to the will or codicil Affidavit of execution required where the clause of attestation is absent or defective. may be partially defective or absent altogether. In these cases, the court has required proof that the execution was such as the statute enjoins. If either of the attesting witnesses will depose affirmatively, the court is satisfied with his evidence, without calling for that of his co-witness.

The affidavit, even in the case of a partially defective attestation clause, goes to the whole of the execution of the will or codicil; it does not merely supply the deficiency.

Dispensed
with.

If both the attesting witnesses are dead, or have left the country, or have absconded, or have been applied to and have refused to make an affidavit, or are lunatic or imbecile, the court, on evidence of the fact, will submit to this compulsory *inopia testimonii*, and will dispense with the proof of execution; and the court can do so the more easily, as its right to call for such proof in common form may be more than doubted.

The 9th section of the Wills Act (1 Vict. c. 26), declares that no form of attestation shall be necessary. The presumption of law, therefore, is in favour of any will or codicil signed by a testator and attested by two witnesses, notwithstanding a clause of attestation may be wholly absent, and the decision in *Burdett v. Spilsbury* (m), carries this presumption further, by extending it to cases where there is an attestation clause and some particular is wanting in it.

There is, therefore, little room for doubt that this practice of the Prerogative Court is erroneous. The court can have no right in common form to raise of itself a question respecting the legality of the execution of an instrument, when it has no power to decide

(m) 8 Jurist Reports of Cases, p. 1.

that question legally, as well through want of parties as also a defect in its mode of trial, its only means of treating the question being by mere voluntary affidavits.

The court might as well in its common form call for affidavits in proof of a testator's majority and of his testamentary capacity. This faulty practice seems to have arisen from the want of a due regard to the distinction between common form and solemn form business (n).

If both witnesses agree in distinctly negating the execution of a will or codicil on affidavit, the court, on the affidavit being filed, tacitly allows another will to be proved, or excludes the codicil from probate, or permits mere administration to be taken, as in the case of an intestacy.

If out of three or more witnesses to a will or codicil one shall turn out not to have legally attested the instrument, the court will direct the subscription of such unnecessary and non-attesting witness to be excluded from the probate and the registration (o).

The presumption of law is against an unat- Alterations in a will or codicil.
tested alteration being in a will or codicil at the time of the execution of the instrument. Evidence, therefore, must be produced to rebut this presumption if it be desired by the executor or others, that an alteration be retained as

(n) See also *Bryan and others v. White*, 2 Robertson, 315.

(o) *Robert Monro*, deceased, 24th June, 1852.

legal, for if this proof be not forthcoming the court must exclude the alteration from probate (*p*).

Affidavit as
to alterations,
&c.

If interlineations, interpolations, erasures, words or figures written upon erasures, or any thing of the nature of an alteration or an unauthenticated addition appear in the will, proof must be adduced that they were written and made, at a period preceding the execution of the will (*q*). Affirmative evidence of this character from an attesting witness who observed the alterations, or whose attention was drawn to them, before or at the period of the execution, or from the drawer of the will, who can depose that the parts apparently interpolated or altered accord with his draft, or from the writer or engrosser of the will, who can prove them to have been his own ministerial handiwork, either as the correction of his own error in copying, or as a change of

(*p*) *Cooper v. Bockett*, Judicial Committee of the Privy Council, 4 Notes of Cases, p. 685. In the Prerogative Court of Canterbury, Sir H. Jenner Fust, adverting to the judgment of the judicial committee in this case, said—"I call the attention of the council and proctors to this decision, which is binding upon this court, so that, in future, where unattested alterations shall appear on the face of a paper, and no evidence can be given as to when they were made, the court will presume they were made *after* the execution, and consequently hold them to be invalid."—November, 1846. 4 Notes of Cases, p. 695.

(*q*) There is no provision against *spaces* being left in the body of a will; *Corneby v. Gibbons*, 6 Notes of Cases, p. 694; and *Kirby*, deceased, *ibid.*

intention on the part of the testator preliminarily to the execution of the will, the court will treat them as a substantive and authentic part of the will.

An affidavit from any one of the persons whom we have designated, or from any other person who is in any other mode qualified to depose, is sufficient to entitle the alteration to probate.

A single interlineation or interpolation will prove itself if the signatures (or the initials of the signatures) of the testator and the two attesting witnesses are written opposite to or near it.

It is unnecessary to say that this is not sufficient to authenticate two or more interlineations or interpolations or even a single erasure, whether the latter be with or without words written upon it.

It is equally obvious that a recital of all alterations in the attestation clause is satisfactory evidence of itself.

But there are other circumstances attendant upon a will which, though they do not, either wholly or in part, impugn the legality or authenticity of the instrument, will require explanation, to be given to the satisfaction of the court.

The vestiges or marks of a seal, or wafer, appearing on a will or codicil, raise a presumption, or, at least, a suspicion, that some further testamentary document may have been

Suspicious or suggestive appearances on the face of a will or codicil.

at one time affixed to it. A portion of the last sheet, sufficient in size to have contained a codicil, may have been cut away, or even the commencing portion of a will may betray an analogous spoliation by its abruptness of initiation, or by absolute abscission. In all these cases, in order to rebut the presumption of spoliation, evidence must be given either by showing that the testator, *per se* or *per alium*, removed a codicil or a portion of the will, or that when the will was found, on the occasion of the testator's death, it was in the identical condition in which the executor produces it to the court.

Words expunged from probate.

It has been the constant practice of the court, where just ground exists, to exclude from probate and from registration words of atrocious, offensive or libellous character (*r*); but it cannot exclude any words or sentences which do not come within such categories (*s*).

Restoration of words.

The court will restore the original words or figures of a bequest which have been erased or obliterated with the intention of substituting other words or figures in their stead (*t*).

Soldiers' and mariners' wills.

The 11th section of the Wills Act (1838), opens a wider field for evidence, as it must be

(*r*) *George Wartnaby*, 4 Notes of Cases, p. 477.

(*s*) *Curtis v. Curtis*, 3 Add. p. 33.

(*t*) *Brooke v. Kent*, 1 Notes of Cases, p. 93; 3 Moore, P. C. C. 341.

shown that the deceased has come within the privileges of the act (u). This section does not alter the old law upon the subject of these wills; and the same observations, therefore, which apply to wills made previously to 1st January, 1838, apply equally to wills excepted by the act from its general operation.

A will, without attesting witnesses, if made before the 1st January, 1838, is admissible to probate; and an affidavit of two persons, who knew and were acquainted with his handwriting, and mode of subscription, will be taken as a substitute for an execution in the presence of the same number of witnesses.

Wills made
before 1st
January,
1838.

The will of a person dying in Scotland, which, from an omission of some of the formalities of the English Wills Act is, *primâ facie*, invalid, will be admitted to probate on proof of the testator's domicile, and of the validity of the will, according to the Scotch law.

Wills in the
Scotch form.

The same remark applies to the wills of persons domiciled in foreign parts.

Of persons
domiciled
abroad.

When the will of a person had been proved in an ecclesiastical, manorial or other court exercising testamentary jurisdiction out of the province of Canterbury, or in the Consistory Court of Canterbury, or had been deposited in

Of office and
authenti-
cated copies.

(u) *Richard Hayes*, deceased, 2 Curt. 341; *E. J. Lay*, 2 Curt. 375; *C. E. Phipps*, 2 Curt. 369, but for a very learned and elaborate inquiry as to what constitutes "actual military service," see *Drummond v. Parish*, 2 Notes of Cases, p. 318.

a Scotch court, or in any foreign court, an official or properly authenticated copy of such will was formerly received in the place of the original, and was admitted to probate without inquiry or further evidence, it being presumed that the court in which the original will was deposited was competent to deal with the case, and had been satisfied of its validity. Of late years, however, the practice in this respect has varied so much, that it would be unsafe to say precisely what is now required to be done. This much, however, is clear, that when the will has been registered in the Commissary Court books in Scotland, or in the books of the Court of Session, and the subscription of the testator and the signatures of two persons appear as witnesses, an office copy of the will is now received as formerly.

Probate of a
translation
of a will.

If the will be composed in a foreign language probate is granted of a true translation of it, made by a public notary. The translation alone is registered.

SECTION IV.

LETTERS OF ADMINISTRATION.

If the deceased has died intestate, the persons who are eligible to become grantees of letters of administration of his general estate are va-

rious, deriving their title or interest from different sources.

The statute 31 Edw. 3, c. 11, directs "the ^{31 Edw. 3, c. 11.}
 "ordinaries to depute the next and most lawful
 "friends of the deceased intestate to administer
 "his goods."

The 21 Hen. 8, c. 5, s. 3, directs the ordinary ^{21 Hen. 8, c. 5.}
 "to grant administration of the goods of the
 "person deceased to the widow of the same
 "person deceased, or to the next of his kin, or
 "to both, as by the discretion of the same
 "ordinary shall be thought good."

But these statutes do not contain all the directions upon the subject. The husband has a right to a grant of administration of his deceased wife's personal estate, by the common law; and the 29 Car. 2, c. 3, s. 25, directs, that ^{29 Car. 2, c. 3, s. 25.}
 the husbands of *femes covertes*, dying intestate,
 "may demand and have administration of their
 "rights, credits, and other personal estate, and
 "recover and enjoy the same, as they might
 "have done before the making of the 22 & 23
 "Car. 2, c. 10."

And the relatives (not next of kin), having distributive shares, *jure representationis*, under ^{22 & 23 Car. 2, c. 10; and 1 Jac. 2, c. 17.}
 the 22 & 23 Car. 2, c. 10, and 1 Jac. 2, c. 17;
 and also all persons having a cognizable beneficial interest in the intestate's estate, may ^{Beneficial interest.}
 become grantees, on the renunciation of the *potiores*.

It is not necessary that there should abso-

Parties interested cited to propound will, &c.

lutely have been no will at all of the deceased. The court will grant administration to the next of kin, notwithstanding it is suggested that, *de facto*, there is a will, if the executor and the residuary and principal legatees have been cited to propound such will, and have not appeared to the citation (x).

Will marked with insanity.

And where the deceased died insane, leaving a will, which was, upon the face of it, marked with insanity, the court granted administration as in an intestacy, but directed the will to be filed (y).

Administrator's oath of office.

The applicant for administration deposes to his qualification or interest, and takes an oath of office, *mutatis mutandis*, much the same as that of the executor or administrator (with the will annexed).

Affidavit of property.

And he makes an affidavit as to the amount of the intestate's personalty, under the 55 Geo. 3, c. 184, in the same manner as an executor does.

Administration bond.

He also is required to give a bond for his due administration of the estate about to be committed to him.

By the new act, the law and practice of administration bonds are put upon a new footing.

By the 80th section, "so much of the 21 Hen. 8, c. 5, 22 & 23 Car. 2, c. 10, and

(x) *Whiting v. Deal and Orchard*, 2 Spinks, 57.

(y) *Bourget*, deceased, 1 Curt. 591.

“ 1 Jac. 2, c. 17, as requires any surety, bond, “ or other security, to be taken from a person “ to whom administration shall be committed, “ is repealed.”

The 81st section enacts, that “ every person “ to whom any grant of administration shall be “ committed, shall give bond to the judge of “ the Court of Probate to enure for the benefit “ of the judge for the time being ; and, if the “ Court of Probate, or (in the case of a grant “ from the district registry) the district registrar, “ shall require, with one or more surety or “ sureties, conditioned for duly collecting, get- “ ting in, and administering the personal estate “ of the deceased, which bond shall be in such “ form as the judge shall, from time to time, by “ any general or special order, direct.”

The 82nd section enacts, that “ such bond “ shall be in a penalty of double the amount “ under which the estate and effects of the de- “ ceased shall be sworn, unless the court or “ district registrar (as the case may be) shall in “ any case think fit to direct the same to be “ reduced, in which case it shall be lawful for “ the court or district registrar so to do ; and “ the court or district registrar may also direct, “ that more bonds than one shall be given, so “ as to limit the liability of any surety to such “ amount as the court or district registrar shall “ think reasonable.”

By the 83rd section, the court "may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon, as a trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond."

Obligor substituted for administratrix's husband in his absence.

On the application of an administratrix, whose husband is absent from the United Kingdom, the court will allow a person named by her to give bond in the stead of her husband.

The affidavit of the wife will state the fact of the absence of her husband, and her belief that he will not soon return, and would consent to her taking the grant if he were in this country, and that he would enter into the usual bond on her behalf.

It may be also said, that an affidavit of this nature should state circumstances which will tend to show that the proposed grant, though about to be made to a *feme coverte*, will be

operative, and will not require to be revoked thereafter (x) for refusal of co-operation on the part of the husband in the administration of the estate.

These are the usual and necessary proceedings to be taken on the part of every applicant for letters of administration. Whatever other preliminaries are required depend upon and are regulated by the nature or degree of the applicant's title, and will be considered separately.

After this the letters of administration are made out and granted to the applicant.

But fourteen days, excluding the day of the deceased's death, must have fully elapsed from the intestate's death before the letters of administration are allowed to pass the seal. This rule, however, will be relaxed by the judge on special cause being shown, *e. g.*, that the effects are perishable (a). Efflux of fourteen days before grant passes the seal.

Where the deceased is sworn to have died "on or about" a certain day, seventeen clear days (excluding the day on or about which the deceased is sworn to have died) must elapse before the letters of administration pass the seal (b).

(x) Vide "Revocations," *post*.

(a) Oughton's note to *Clarke's Praxis*, p. 323, says, "nisi 'speciales ob causas (utpote factâ fide bona esse peritura, '&c.), literas administrationis specialiter decernere iudici 'melius visum fuerit, citius extrahi.'"

(b) It was omitted to state before, at p. 42, that when the deceased's death, in the case of probate or letters of admi-

We will now take the different grants in detail.

Grant to the
intestate's
father.

If the intestate has died a bachelor, or a widower without issue, his father has exclusive right to administration, notwithstanding the deceased has left a mother. The father is considered to be the sole next of kin of the intestate(c), though the letters describe him only as the natural and lawful father, without any further addition, except in the case of his taking administration to an intestate who has died a widower and childless. In the latter case he is styled in the grant, "the natural and lawful father, *and next of kin.*"

To the
widow.

The widow (or the relict) of the intestate takes administration in preference to the children or next of kin, unless the latter establish such a case of unfitness on her part as to induce the court (in exercise of the discretion given to it by 21 Hen. 8, c. 5, s. 3) to exclude her(d).

To the chil-
dren.

If the intestate has left no widow, the intestate's children, or any of them, take the grant. They do so likewise if there is a widow who renounces or is excluded by the court, in the exercise of its discretion, as we have stated.

nistration (with the will annexed) is sworn to have occurred "on or about a certain day," the grant is not issued until the expiration of nine clear days from the death, *i. e.*, the day of the death being excluded.

(c) See "Law Magazine and Law Review," vol. 3, p. 82.

(d) *Conyers v. Kitson*, 3 Hagg. 557.

The husband takes administration to his wife, *jure mariti*, by the common law, and his right to the administration of her personal property *quâ* husband, is recognized and declared by 29 Car. 2, c. 30, s. 25, and 1 Jac. 2, c. 17, s. 5. To the husband.

If the husband of the intestate has survived her, but has died without having taken administration, the court, on the ground of his interest, will grant administration to his legal personal representative, and not to her next of kin. To the husband's legal personal representative.

But this rule, being founded on the assumption that the beneficial interest vested in the husband, and devolved to his representatives, and on the principle that the grant ought to follow the interest, is liable to be departed from in cases where it can be shown that the beneficial interest did not survive his life, and that the wife's separate property has, upon his decease, by the terms of the instrument constituting it, reverted to her own family (e). Exception.

In a late case, where the wife of a felon convict died intestate in her husband's lifetime, and before the expiration of his sentence, leaving property acquired by her *after* his conviction, the court granted administration to the solicitors of the Treasury on behalf of the Crown, after citing the husband (f). Administration of effects of wife of felon.

(e) *Fielder and Fielder v. Hanger*, 3 Hagg. E. R. 769; *ibid.* vol. 3, 290; *Mary Pountney*, 4 Hagg. E. R. 290.

(f) *Coombs v. Her Majesty's Proctor*, 2 Robertson, 557.

But in an earlier case, administration was granted of the effects of the wife of a person under sentence of transportation, to one of her children, on the king's proctor not objecting (*g*).

To the next
of kin.

If the intestate has left neither widow, issue, nor parents, the next of kin take administration in the order of their proximity. And on the renunciation of an intestate's husband, her children may take administration of her effects.

To the hus-
band of a
next of kin.

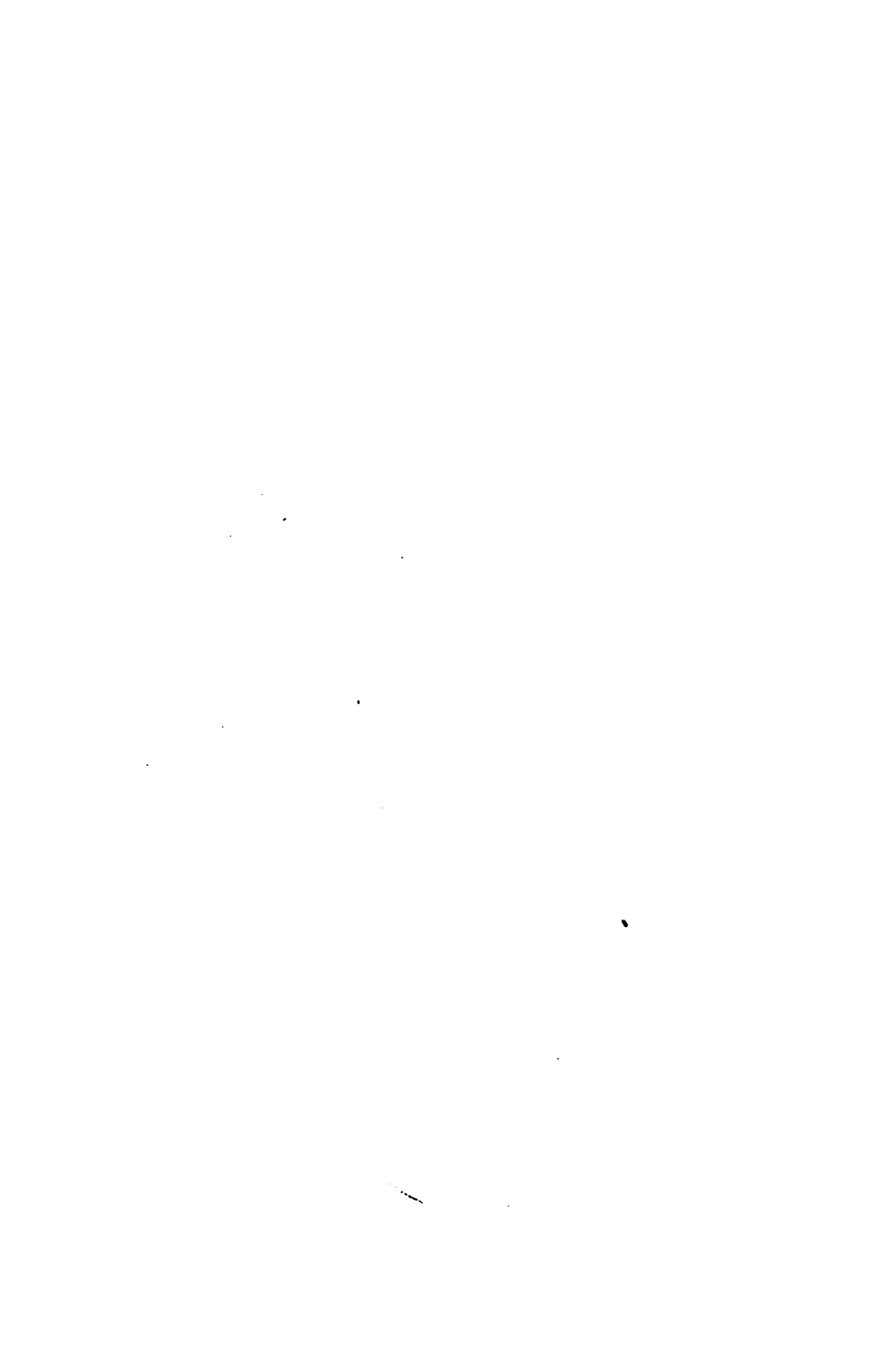
The court will give administration to the husband of a sole next of kin, on her being first cited and not appearing to the process. If there be other next of kin, they must also renounce or refuse (*h*).

En résumé, it may be said that administration is granted to—

1. Husband or wife.
2. Child or children.
3. Grandchild or grandchildren.
4. Great grandchildren, or other descendants.
5. Father.
6. Mother.
7. Brothers and sisters.
8. Grandfathers or grandmothers.
9. Nephews and nieces, uncles, aunts, great grandfathers or great grandmothers.

(*g*) *Ann Davis* (wife of *John Davis*), March, 1826.

(*h*) *Wenham v. Wenham*, 6 Notes of Cases, p. 17.





10. Great nephews, great nieces, cousins german, great uncles, great aunts, great grandfather's father, and so on according to the proximity of kindred: all those who are in the same degree being equally entitled (i).

It will be useful to show in what manner the estate of a deceased intestate is disposed of. The distribution is regulated by the 22 & 23 Car. 2, c. 10, and 29 Car. 2, c. 3, and 1 Jac. 2, 17, and may be concisely stated as follows:—

To persons
entitled in
distribution.

If the intestate dies leaving a *husband*, he is entitled to all the estate.

If the intestate leaves a *wife*, she is entitled one-third, and the next of kin, if descendants, the remainder, the issue of deceased next of kin, being descendants, sharing with them by representation.

If there be no descendants she is entitled to one-half, and the next of kin to the other half. For example, if the intestate leaves a wife and mother, a moiety goes to each. If he leaves a wife, mother, brother and sister, the wife is entitled to half, and the mother, brother and sister to the other half, equally among them. If the intestate leaves a wife, mother, brothers and sisters, nephews and nieces, the wife is entitled to half, and the mother, brothers and

(i) Vide the accompanying table.

sisters, and nephews and nieces, to the other half equally; the nephews and nieces, as representing a deceased brother or sister, taking a share equal to that of each of the others among them. No kindred more remote in degree is entitled to share in distribution with these.

If there be no descendants, father, mother, brother, sister, nephew or niece, (children of a brother or sister, who has died in the intestate's lifetime,) the wife is entitled to one-half, and the next of kin, *i. e.*, all those in the same degree of kindred, are entitled to the other half equally among them.

If there be no next of kin, or the intestate be a bastard, one half goes to the wife, and the other half to the Crown.

Child or children take between or among them equally, grandchildren and more remote descendants taking with them *per stirpes*.

Grandchild or grandchildren share in like manner, great grandchildren, and more remote descendants, taking with them *per stirpes*.

The same observation applies to further descendants.

If there be no widow or child, the *father* takes all the estate.

So the *mother* takes all, if there be no brothers or sisters, or nephews and nieces taking *per stirpes*. No other kindred than these is entitled to share with the mother.

Brothers and sisters share among themselves equally, nephews and nieces taking with them *per stirpes*.

Grandfathers and grandmothers share among themselves equally. If there be only one, that one takes all.

Nephews and nieces share together with uncles, aunts, great grandfathers and great grandmothers equally, they being all in the third degree; and so on with other kindred according to their degree; all those in the same degree taking an equal share (*h*).

The court grants to any of these persons, not being next of kin, on the ground of their having an interest in the intestate's estate, but does so only on the renunciation of the widow and next of kin. If the latter are dead, persons entitled in distribution (as the Ecclesiastical Court has called them) are allowed a preference over the legal personal representative of the next of kin.

If the widow, next of kin, and all other persons entitled to share distributively, be dead, the court will grant administration to the legal personal representatives of any one of them, for in such a case they all rank equally. In this case the court disregards the statute, as applying only to the living, and has regard to the beneficial interest which has been transmitted to the representatives.

To legal personal representatives of widow or next of kin, &c.

(*h*) The customs of London, the province of York, and certain other places are abolished by 19 & 20 Vict. c. 94.

It is almost superfluous to say that the executor or administrator of a deceased person, who was entitled to the whole of an intestate's property, is also entitled to a grant of administration, as fully as such deceased person would have been if he were living.

It is the practice to allow one of two executors to take administration to a deceased, whom their testator was entitled to represent. But this is not applied to the case of co-administrators. They must take administration under such circumstances jointly, or the non-acting one must renounce or consent (*l*).

To a person having a derivative interest.

On the ground of interest, the court will grant to a person having an indirect and derivative interest in an intestate's estate, as being one of the next of kin, or the residuary legatee of a next of kin, of the intestate. But the applicant must be unable to become the personal representative of his own deceased, through the latter being already legally represented, and such legal representative refusing to take the requisite grant (*m*).

So, administration has been granted of a wife's estate to the residuary legatee of the husband, on the executor, who has proved the will of the latter, renouncing administration (*n*).

(*l*) *F. Naylor*, 15 Jurist, p. 686.

(*m*) Vide "Administration (Will)," p. 61, and "Administration de bonis non," *post*.

(*n*) *Amelia Fixer* (wife of *Robert Fixer*), August, 1853.

On the renunciation and consent of the father of an intestate who has died a bachelor, the court will grant to his brother, though he has no interest in the estate. The court does so on the principle, that the intestate's brother may be considered to have indirectly as his father's next of kin, a *spes successionis*, to the very property in question. He may also, and not unfairly, be regarded in the light of his father's attorney or agent.

To next relative who has *spes successionis*.

To a brother or sister.

On the same grounds, also, the court will grant administration to the sister of the deceased.

On the same principle the court has granted administration to a nephew, who is not entitled in distribution.

To a nephew.

In "*Keane's*" case, the court granted administration to a nephew, being the son of the deceased's brother, who was the sole next of kin, and only person entitled to the personal estate of the deceased, on the renunciation and consent of that brother (*o*).

In "*Blagrove's*" case, the court granted administration to the son of a deceased brother, who was the sole next of kin, on the renunciation of his executrix and universal legatee, and of certain nephews and nieces entitled with him in distribution (*p*). The court said, "Though

(*o*) *Mary Keane*, 1 Hagg. E. R. 692.

(*p*) *A. Blagrove*, 2 Hagg. E. R. 83.

“the party has not a direct interest, he is acting under a person entitled to a moiety of the property.”

Spes successionis how shown.

The principle which governed the court in making the grants in *Keane* and *Blagrove*, is not distinctly stated, but would seem to be this:—The grant is not made to the applicant as being the deceased's nearest relative after the renunciant, but as having a *spes successionis* to the deceased's property, though remote and indirect, through the next of kin.

The principle may be further elucidated by the unreported case of “*John Scale*, deceased.”

In this case a nephew of the intestate applied for administration on the renunciation of the widow and daughter. But the court rejected the application on the ground that the nephew's chance of succeeding to any part of the deceased's estate, as being through his cousin the daughter, “was too remote and contingent to be considered an interest in the deceased's estate, and that he could not, by any fiction of law, be held to be the daughter's natural agent” (*q*).

So in *Gibbon*, deceased, the court refused to grant to a nephew of the intestate's next of kin, but allowed the daughter of the latter to take administration (*r*).

To creditors.

If the widow, and all the next of kin of an intestate, and also all others entitled to share

(*q*) *John Scale*, bye-day after Hilary Term, 1835.

(*r*) Reported in “*Waddilove's Digest*,” p. 9, s. 56.

with them in distribution, renounce, a creditor is competent to take administration.

His title is said to be inferior to that of all others (*s*); and the ground for granting administration to him is the obvious one, viz., that he may be enabled to recover his debt (*t*).

It is a matter of indifference to the court, whether he be a creditor by specialty, or on simple contract. It is equally indifferent to the court what the amount of his debt is, and these questions only become a subject for consideration when two or more creditors contend, *inter se*, for a grant.

A creditor does not make a special affidavit of his debt on taking administration, but swears in general terms that he is "a creditor."

The court will grant administration to a creditor in equity, or of the estate of the deceased (*u*).

In "*Spitty's*" case, where a relative of the deceased, (a married woman) living apart from her husband, had ordered and paid the charges of her funeral and interment, and the husband had refused to reimburse him, the court, on

(*s*) *Graham v. Maclean*, 2 Curt. 663; *Dimes v. Cornwall and Lyon*, 7 Notes of Cases, p. 381, and 2 Robertson, 142.

(*t*) *Webb v. Needham*, 1 Add. 497.

(*u*) *Charlotte Spitty* (wife of *Thomas Spitty*), moved, 1st Sess. Easter Term, 1851; 2nd Sess. Trinity Term, 1851; and 1st Sess. Easter Term, 1852.

the husband being cited, granted administration to the applicant as a creditor of the estate (*x*).

In "*Ody's*" case, the deceased had been a lunatic, to whom a committee of the estate had been appointed, and on her death a representation was required for the Court of Chancery, in order that *his* accounts might be taken in and audited, and the matter wound up.

The court granted administration to the committee, as a creditor of the estate, on the consent or non-objection of the Queen's proctor, the deceased having died without known relations (*y*).

The court does sometimes grant administration to more creditors than one; but it prefers that one should be fixed upon (*z*).

If creditors contend, and their pretensions are equally balanced, it will grant administration to a third person, being a creditor, whom they may all agree in nominating for that purpose (*a*).

Articles to
pay *pro rata*.

To secure the general body of creditors, when the estate is insufficient, the administrator may

(*x*) Vide "*Administration (Will)*," p. 60, and *post*, in "*Administrations de bonis non*."

(*y*) *Ann Ody*, widow, on motion, 1st Sess. Hilary Term, 1853. The administration passed the seal in January, 1853.

(*z*) *Harrison and others v. All persons in general*, 2 Phill. 249.

(*a*) *Dimes v. Cornwall and Lyon*, 7 Notes of Cases, p. 380.

be compelled to enter into articles to pay *pro rata* to each one his debt, according to its degree.

The court will grant administration of the wife's estate to a creditor of her husband, on the latter renouncing.

Administration of wife's effects to her husband's creditors.

Administration has been granted of the effects of a *feme covert* to an antenuptial creditor of her own, her husband having been first cited (b).

Of a wife's effects to antenuptial creditor of her own.

If the intestate has died a bankrupt or insolvent, the court will grant to his provisional or official assignee (c). But not being possessed of the discretion which it now enjoys (under the 73rd section of the new act (d)), the Ecclesiastical Court required, before making such grant, that the renunciation of the intestate's next of kin should be obtained, in the same manner as in the case of creditors. For though the assignee had the entire legal right and interest in the intestate's property, the next of kin had, under the statute of Hen. 8, the right to the administration (e).

To assignees in bankruptcy and insolvency.

Upon the subject of assignees of a deceased (a bankrupt), Sir J. Dodson has remarked, "They certainly are not merely creditors, for,

(b) *Huddleston v. Huddleston*, 2 Robertson, 424.

(c) *Belcher v. Maberley*, 2 Curt. 629.

(d) *Vide post*.

(e) *Drewe and others v. Long*, and also *Rolfe and Cayford*, 1 Spinks, 397.

although they may be appointed for the benefit of the creditors, yet their appointment as assignees divests them of the character of mere creditors, and clothes them with a new one. By act of parliament, the whole property of the bankrupt vested in them; they represent the estate, and are enabled to act, in all respects, in behalf of the estate" (e).

To the assignee of next of kin (a bankrupt).

So, if the sole next of kin of the intestate be a bankrupt or insolvent, the court will grant to his assignee on his renunciation and consent.

To an official manager.

Upon the same reasoning the court will grant to the official manager of a joint-stock company, which is in the course of being administered under the Winding-up Act, administration of the effects of a deceased contributory, such official manager being a creditor to the extent of the required contribution from the deceased (f).

To assignee by voluntary assignment.

If a sole next of kin has assigned the whole of his right and interest in the intestate's estate, the court will grant to the assignee, on the renunciation and consent of the former (g).

Administration under

Though the 21 Hen. 8, c. 5, is to remain obli-

(e) *Drewe and others v. Long*, and also against *Rolfe and Cayford*, 1 Spinks, 400.

(f) *Angas v. Henderson*, 31st May, 1851. A citation to the above effect was decreed by Sir H. J. Fust, but the case proceeded no further.

(g) *Almes v. Almes*, 2 Hagg. E. R. 155, Appendix.

gatory upon the court in all ordinary cases, the ^{20 & 21 Vict.} 73rd section of the new act has given a discretionary power to the court, under special circumstances, to depart from the regulations of the first-mentioned statute. ^{c. 77, s. 73.}

By the section referred to it is enacted, that "where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who, if this act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person, to the person who, if this act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such adminis-

trator, upon his giving such security (if any) as the court shall direct; and every such administration may be limited as the court shall think fit" (h).

Of a bastard's effects.

If the intestate be a bastard, the court grants administration of his effects to the nominee of the Crown. This nominee, who is appointed by warrant, is most commonly the solicitor for the affairs of the Treasury, but sometimes is a natural relation of the deceased.

He files an inventory of the estate.

Of effects of a person without known relations.

If a person of legitimate birth die intestate, having no known relations, and no husband or wife, the nominee of the Crown takes administration as in the last-mentioned case.

He files an inventory of the intestate's estate and effects.

In each of these cases the grant, if made to the solicitor of the Treasury, is made to him and to his successors in the office, and therefore no administration *de bonis non* is afterwards required.

For it is provided by the 1st section of the 15 Vict. c. 3, ("An Act to provide for the Administration of Personal Estates of Intestates and others, to which her Majesty may be entitled in right of her Prerogative or in right of

(h) This is a very wholesome enactment. The *rationale* of, and necessity for, such a change of law, were pointed out some time since in the "Law Magazine," vol. 53, p. 1.

her Duchy of Lancaster,") that "so often as her majesty, by any warrant under her sign manual, shall be pleased to direct the solicitor for the time being for the affairs of her majesty's Treasury to apply for and obtain letters of administration of the personal estate and effects of any person dying intestate, to whose personal estate and effects her majesty may have become entitled in right of her royal prerogative, or letters of administration (whether general or limited) of the personal estate and effects of any other person deceased, where, in respect of the interest of her majesty in such estate and effects, such administration may be rightfully granted to a nominee of her majesty, it shall be lawful for any competent court in England, upon application, in pursuance of such warrant, to grant administration accordingly to such solicitor for the time being, and his successors in the office of solicitor for the affairs of her majesty's Treasury for the use and benefit of her majesty; and in every such case the administration so granted, and the office of administrator under the grant, with all the estates, rights, duties and liabilities of such administrator, shall, upon the death, resignation or removal of the solicitor for the affairs of her majesty's Treasury for the time being, devolve upon and become vested and continue in the succeeding solicitor by virtue of his appointment, and so in perpetual

succession, without any further grant of administration or any assignment or transfer of the estates of the administrator; and all actions, suits, informations and other proceedings whatever, at law or in equity, by or against any such solicitor for the time being as such administrator, at the time of his death, resignation or removal, shall continue and may be proceeded with by, in favour of and against the succeeding solicitor in like manner; saving always the effect of every limitation, in duration or otherwise, under the terms of the grant of any such administration; and saving, to every court having jurisdiction in this behalf, all such right and authority to revoke or repeal any such administration, as such court would have had during the continuance of a like administration, granted to a nominee of her majesty, in case this act had not been passed."

By the 2nd section of the same act, the administration bond is dispensed with in these cases. And the 81st section of the new act also contains a proviso, "that it shall not be necessary for the solicitor for the affairs of the Treasury, or the solicitor of the Duchy of Lancaster applying for or obtaining administration, to the use and benefit of her majesty, to give any such bond."

The afore-
going grants
made to cre-
ditors.

If the Crown will not take administration of the estate of a bastard, or of a person without

known relations, a creditor is competent to take it.

He must first advertise in three newspapers, at an interval of a fortnight between the insertions, and must then take out a citation against all persons.

The citation must be served, in each case, not only upon the Royal Exchange, but also upon the Queen's proctor.

But the Queen's proctor is named as a citee in the citation in the *Bastard's* case only, and not in the other.

The creditor also makes an affidavit of the nature and amount of his debt, and of the estate, and that he has no security by which the debt may be recovered without letters of administration. If no person appears to the citation—if no information is elicited from the advertisements, and if the Queen's proctor does not object on behalf of the Crown, the court grants administration to the creditor.

He files an inventory of the deceased's estate.

But if the bastard intestate's property does not amount to the sum of 20*l.*, and the Queen's proctor does not object, the court, on the production of a letter from the Queen's proctor to that effect, and an affidavit from the creditor of his debt, will grant administration to the latter without citation.

In a case of a bastard (occurring some years

ago), where the property, though very small, exceeded this sum, the judge (Sir Herbert Jenner Fust), by direction, *in camerá*, dispensed with the citation, because the creditor who applied for the grant was the intestate's mother, and swore directly to his bastardy.

The same observations apply also to the case of the deceased, who, having no relations, has left an estate under the value of 20*l*. But in this case the creditor must advertise, and make affidavit that his advertisements have failed to bring forth any next of kin.

Of goods of
a felon and
felo de se.

In the case of a felon convict, and of a *felo de se*, the nominee of the Crown takes administration for the use and benefit of her majesty, in the same manner as in the other cases which we have mentioned. But in the case of *John Sadleir*, a creditor of the deceased, having obtained a warrant from the Crown, took administration instead of the solicitor for the affairs of the Treasury (*k*).

There are, of course, no advertisements and no citation in this as in the other cases.

Administra-
tion of the
effects of per-
sons dying
in servitio
reginæ.

The Legislature, by the 11 Geo. 4 & 1 Will. 4, c. 20, s. 56, has made certain regulations respecting the mode of obtaining administration of the effects of a petty officer or seaman, non-commissioned officer of marines or marine, where he dies intestate, "leaving any wages, prize

(*k*) August, 1856.

“ money or other allowance of money, of any kind, due to him in respect of services in her majesty’s navy.”

In this event the same shall not be paid to his representatives, except upon letters of administration to be obtained in the following manner, viz. :—

The person claiming administration shall send a letter to the inspector, stating his place of abode, the parish in which the same is situate, his degree of relationship to the deceased, the names of the deceased, and of the ship or ships to which he belonged ; that he has been informed of the intestate’s death, and requesting the inspector to give such directions as may enable him to procure letters of administration to the deceased’s effects.

Certain further proceedings are directed by the act, the result of which is, that the inspector, being satisfied of the claim, shall transmit to a proctor a certificate thereof. Upon this certificate being produced administration is granted by the court, according to its own rules and forms.

The inspector only grants one certificate, and that to one person only ; and no grant of administration or probate in such cases is made without the production of the inspector’s certificate.



SECTION V.

PRESUMPTIVE PROOF OF DEATH.

Presumptive
proof of
death.

All executors and administrators are required to swear as well to the day on or about which their deceased died, as also to the month and year of the event. But there are constantly cases where no direct evidence enabling the applicant to depose with this particularity can be obtained, inasmuch as he only presumes the person to be dead from the fact of, and circumstances attending, his disappearance, at or after a given period. In these cases the applicant must lay his evidence before the court, and take its opinion upon the fact.

If the court be satisfied that the evidence leads up to a reasonable presumption of the death of the person who has disappeared, it will grant probate or administration (as the case may be), and will give permission to the applicant to swear that the person died at or after the date last given of his existence.

The rule of the seven years has never been applied by the court to these cases. Advertisements, asking for information respecting the person supposed to be dead, are required to be inserted in three newspapers, as in the cases mentioned at p. 97.

But in a case, where the presumed death had been proved in the Court of Chancery, in a matter of the "Trustees Act," and a sum had been decreed to be paid to the next of kin of the deceased, the court, on an affidavit of the latter, stating the facts of the case, and the order of the Court of Chancery, dispensed with the advertisements, and granted administration to the next of kin (*m*).

In all cases of this nature the administrator files an inventory of the deceased's effects, and also gives justifying security.



SECTION VI.

COMMORIENTES.

We will next consider the case of administration granted of the effects of any one of two persons in immediate succession to each other, (whether *ex testamento* or *ab intestato*,) who have perished by the same calamity. Commo-
rientes.

The law upon this subject is in an unsatis-

(*m*) *Thomas Wood*, deceased, 26th May, 1856. By Sir John Dodson. For these cases generally, see *Dean v. Davidson*, 3 Hagg. E. R. 564.

factory state, and imperatively calls for settlement, in this age of railway and oceanic intercommunication, and the dire calamities constantly attendant upon it.

It is obvious that if a claim of succession be advanced on behalf of either of the persons in the before-mentioned category to the estate of the other, a survivorship must be shown of the successor over the predecessor. And no distinction can, we think, be rightly drawn in such cases between a claim to property, and a claim to the administration of that property.

This survivorship will be matter of evidence, or rather of presumption from facts indirectly bearing upon the question.

In *Sillick v. Booth*(o), the question was, which of two brothers, James and Charles, who were lost at sea, died first.

Sir J. Knight Bruce, V. C., said :—" The court need not presume that they died at the same time, but evidence may be admitted to show which of them died first. From the evidence before the Master it appears that James was an older, more robust, and experienced mariner than Charles ; and having regard to that evidence, I am of opinion that the Master was right in coming to the conclusion that James survived his brother."

In this case there was presumptive evidence

(o) 6 Jurist, 142—144.

which satisfied the mind of the judge, that there was a legal survivorship.

But these cases as often take another form. There is occasionally nothing in the facts adduced (whatever they be), which can satisfy the mind of the court that there was a survivorship.

Here the rule is stated by Mr. Justice Williams as follows (*p*):—

“The next of kin has a *primâ facie* right, and therefore where a party claims as, or derivatively from, a residuary legatee, the burthen of proof lies on such party. Hence, where the husband appointed his wife executrix and residuary legatee, and he and his wife were drowned in the same ship, the court granted administration to the next of kin of the husband, on the ground that the next of kin of the wife had not proved her survivorship.”

Mr. Justice Williams, in stating this rule, founds, upon the decisions of Sir John Nicholl, in *Taylor v. Diplock* (*q*), and of Sir William Wynne in *Wright v. Sarmuda* (*r*).

In later days, Sir H. J. Fust stated the rule thus (*s*):—

“It appeared to me that this point was

(*p*) A Treatise on the Law of Executors and Administrators, p. 404.

(*q*) 2 Phill. 267.

(*r*) *Ibid.*

(*s*) *Satterthwaite v. Powell*, 1 Curt. R. 706.

settled. The principle has been frequently acted upon, that where a party dies possessed of property, that the right to that property passes to his next of kin, unless it be shown to have passed to another by survivorship. Here the next of kin of the husband claim the property which was vested in his wife. That claim was to be made out, it must be shown that the husband survived. The property remains where it is found to be vested, unless there be evidence to show that it has been divested. The parties in this case must be presumed to have died at the same time, and there being nothing to show that the husband survived his wife, the administration must pass to her next of kin."

In the case of *Robert Murray*, deceased (*t*), where a man, his wife and child, were drowned at sea, and nothing was stated beyond these circumstances, the court granted administration (with the will annexed) to the next of kin of the husband, as dead, a widower, "there being nothing to show that the wife survived." Here the wife was the sole executrix under the husband's will (*u*), and her next of kin consented. The grant of administration (with will) states that the deceased died a widower, and that his wife died in his lifetime (*x*).

(*t*) 1 Curt. 596.

(*u*) April, 1837.

(*x*) The report is incorrect in stating that the wife was universal legatee. The residue was not disposed of.

So, "in the goods of *Henry Selwyn*" (y), Sir John Nicholl laid it down, that "in the absence of clear evidence, it has generally been held that both died at the same moment."

These decisions and *dicta* in rejecting for want of evidence claims which to be good, must have their foundation in a survivorship, obviously only follow a rule of law which applies to them as well as to other claims, under a will or under an intestacy. But the converse does not seem equally reasonable, that because the one claim is rejected for want of evidence to support it, that the other, viz., that of the next of kin of either commoriant, should be sustained without evidence or presumption, though it arises out of the same circumstances and facts. There does not appear to be any reason why one rule should be applied to cases where a claim is made through and in the name of one commoriant as the survivor of the other, and another rule should be applied to cases where a third party (or living person) claims the succession to one commoriant, independently of and to the total exclusion of the other; why, in the one case, satisfactory proof of survivorship must be adduced, and in the other, that question is laid aside and evaded altogether. There might seem to be as much question of survivorship in the one case as in

(y) 3 Hagg. E. R. 749.

the other, whether the party applying claims through one commoriant the succession of the other, or whether another party claims that succession irrespectively of and to the exclusion of the other commoriant.

Mr. Justice Williams lays it down in general terms (z), that "in cases of this kind the question of survivorship is by the law of England a matter of evidence merely, and in the absence of evidence there is no rule or conclusion of law on the subject."

And in a note upon the same passage, in his work, that distinguished judge says, "And it appears to have been sometimes deemed a rule in the Ecclesiastical Court, that they must, under such circumstances, be presumed to have perished at the same moment, unless proof can be obtained as to the exact time when either of them died. *But it can hardly be assumed as a fact, that two human beings ceased to breathe at the same moment of time*" (a).

This view is of course in direct antagonism to the rule made and followed in the Ecclesiastical Court, as we have seen.

This rule, while it bows before direct proof of survivorship on the part of either one of the commorients, is content, when such proof is not

(z) Page 1084.

(a) These are the words of Lord Cranworth, 4 De G., M. & G. 661.

adduced, to admit the next of kin of either of the deceased persons, to the succession of the other, without requiring them to enter into the question of survivorship, on the presumption that both persons died at the same moment of time.

With this rule, however, the *dicta* of the Ecclesiastical Court have not always been consistent. It has occasionally been laid down that the husband must have survived the wife (*b*).

It may be useful to quote the opinions of some distinguished text writers upon the subject.

Mr. Phillips says (*c*), — “ No very definite rule has been adopted in this country upon the subject ; but there appears to have been a leaning to consider the person, possessed of the property in dispute, to have survived ; and some regard appears to have been paid to the probability of the survival of the stronger party.”

Mr. Pitt Taylor, in his *Treatise on the Law of Evidence* (*d*), observes :—“ The Prerogative Courts, however, adopt the presumption, that both sufferers perished together, and that therefore neither could transmit rights to the other ; and, in the total absence of all evidence of the parti-

(*b*) *Colvin v. Her Majesty's Proctor*, 1 Hagg. E.R. 93 ; *Taylor v. Diplock*, 2 Phill. 279.

(*c*) Vol. i. p. 449.

(*d*) Vol. i. p. 131, edit. 1848.

cular circumstances of the calamity, this rule will probably be found the safest and most convenient; but if any circumstances of the death of either party can be proved, there can be no inconvenience in submitting the question to a jury, to whose province it peculiarly belongs."

Mr. Starkie observes (e):—"In such cases a general rule is preferable to laborious investigation in each individual case, where the result must always be subject to doubt and uncertainty."

The Wills Act (7 Will. 4 & 1 Vict. c. 26, s. 33) has provided for one state of facts. Where a father and son have been drowned together, the son being his father's sole executor and residuary legatee, and leaving issue, the court will grant administration (will) to the personal representative of the son (f).

To a creditor. If a husband and wife have perished by the same calamity, and a creditor of the former is desirous of taking administration of his estate, he must obtain not only the renunciation of the husband's next of kin, but the consent also of the wife's next of kin.

If he cannot obtain the consent of the latter, he must cite them to show cause.

He cites them under the description of persons who would have been entitled to the

(e) Vol. i. p. 745, in note, edit. 1853.

(f) *James Shilling*, 6th August, 1856.

personal estate of the wife, in case she had survived her husband.

On no appearance being given, administration is decreed to the creditor.

In *Colvin v. Her Majesty's Procurator General (g)*, the court dispensed with a citation of the wife's next of kin, on the ground that "the property was small and the debt large."

SECTION VII.

DOCTRINE OF PRIORITY.

In the preceding pages it has been shown ^{*ius prelati-*} that certain applicants for probate or administration have a preference, or rather priority, of recognition over others not in the same degree. The cause of this preference or priority arises either from the statutes or the invariable rule and custom of the court.

In the case of wills it has been seen, that the ^{*Executor*} executor is *facile princeps*, and has no superior, ^{*has no superior.*} though he may have an equal in a co-executor. This superiority is due to his being, or, at least, being considered, the antitype in power and

responsibilities of the Roman *hæres*, and therefore having the *successio universi juris*.

In other cases, *i.e.*, in wills, the ground of the preference exercised by the court may be thus stated: — It is, that a person having a direct (and immediate) interest is to be preferred to those entitled in a representative character (*h*).

Residuary
legatees, &c.

Under this rule the residuary legatee in trust has priority over the beneficial residuary legatee; and where the residuary legatees are tenants in common, and both having survived the testator, one of them afterwards dies, the survivor has priority over the representatives of the other (*i*). But where one of such legatees has died in the lifetime of the testator, and his (the testator's) next of kin are entitled to the lapsed portion, there is no preference. The residuary legatee for life is preferred to the substituted residuary legatee.

So a residuary legatee, taking an absolute interest in one portion of the estate, has a preference over a residuary legatee having a life interest only in the other portion.

(*h*) *Anne Middleton*, 2 Hagg. E. R. 61.

(*i*) It is a rule in *all* cases, whether of testacy or intestacy, to grant to a person in his own right, rather than to one in a representative character. The soundness of this rule may be doubted, but in common practice it is invariable and inflexible.

A residuary legatee, of whatsoever grade, or the representative of one, (with the exception, of course, of the representative of a residuary legatee for life,) takes priority of pecuniary legatees and creditors.

In intestacy it has been shown, that the next of kin, under the statute of 21 Hen. 8, c. 5, have a preference over descendants and collaterals to whom the Statutes of Distributions have given a share in the intestate's estate, the court granting administration only to persons entitled in distribution to the estate of a deceased person, where the statute of Hen. 8 does not operate by reason of the death or renunciation of the next of kin.

So a next of kin or a person entitled in distribution takes priority of creditors.

To enable any person, having the inferior interest, to take administration (will), or mere administration, all persons having priority must have first renounced or waived their rights, or having been cited must have neglected, by their non-appearance, to avail themselves of such rights.

If a person, having two interests, a superior and an inferior one, (*e. g.*, being an executor and residuary legatee *conjunctim*,) the court will not permit him to elect to take the grant in the inferior character (*k*).

(*k*) *R. Bullock*, 1 Robertson, 275.

So a next of kin, who is a creditor, must administer in his first-mentioned quality.

SECTION VIII.

RENUNCIATION, CONSENT AND RETRACTION.

Renunci-
ation.

Renunciation is the act whereby a person having a superior interest or right to probate or administration, waives and abandons it.

It must be made absolutely and without reserve; and to be effective, it must be admitted and recorded (*l*). But it takes effect from the day of its date (*m*), although recorded later. It is then permanent, and if not retracted, can be acted upon and referred to in all succeeding grants (*n*).

No second renunciation is required (*o*), nor is it necessary to cite the renunciant party.

Except in the case of executorship, it does not bind the representatives of the renouncing party.

(*l*) *Long and Feaver v. Symes and Hannam*, 3 Hagg. E. R. 776.

(*m*) *Munday and Berry v. Slaughter*, 2 Curt. 72.

(*n*) *Harrison v. Harrison*, Robertson, vol. i. p. 406; 4 Notes of Cases, p. 434, and *infra*.

(*o*) *Ibid.*

Renunciation may be made by proxy or by appearing personally, *in curiâ*, i. e., before a surrogate. In the latter case, if the renunciant be an executor, he takes an oath that he has not intermeddled, and will not intermeddle in the goods of the testator.

The executor may renounce probate at once, and his renunciation will be admitted, provided it be accompanied by the original will (q). By an executor.

If he be residuary legatee in trust, or residuary legatee also, he must renounce administration (will) also in these further characters. A residuary legatee, if there be no executor, may renounce and file the will at the same time.

An executor, in renouncing probate of his own testator's will, renounces by implication the execution of any will of which the former may have been executor, and of all other wills comprehended in the chain.

An executor cannot renounce probate of the first will, and take probate of the second one (r).

The renunciation of executorship, which is an office, binds the representatives of the executor (s).

An executor, or an administrator, with the will annexed, or an administrator, may renounce By a legal personal representative.

(q) *M. Fenton*, 3 Add. 35.

(r) *J. Perry*, 2 Curt. 655.

(s) *Ibid.*

the administration, with the will annexed, or administration, which he would be entitled to take in such his representative capacity. And such renunciation will be a sufficient waiver, to admit other interests to administration, if the renunciant be the sole representative of his own deceased. If there be another qualified representative, the latter must renounce also.

Where the acting (or proving) executor was cited, but could not be served personally with the process, the court, under these circumstances, directed the renunciation of his co-executor (*viz.*, of the probate and execution of his own testator's will) to be procured, before it would make a grant in default of the other. Power had been reserved to such co-executor, but he had not proved.

It would seem that the renunciation of the proving or acting executor would have been sufficient, if he had not absconded, and could have been personally served, as in that case his refusal would have been perfect (*t*).

By all the
persons inter-
ested in the
estate.

If there is not a legal personal representative of the deceased person on whose behalf, or in whose name, a renunciation is desired, all persons having an interest in his estate must renounce. Under such circumstances, in the case of a will, the residuary legatee must renounce

(*t*) *Sarah Leach*, deceased, 14th May, 1857. By Sir John Dodson.

as well as the executor; and in the case of an intestacy, all the next of kin, and all the persons entitled in distribution, must renounce.

Where a wife renounces her husband must, By a feme covert. to perfect it, join in her renunciation; otherwise he must be cited (u).

If an executor has intermeddled in the deceased's estate, on the fact being proved, the court will not admit his renunciation (x). On no other ground can he be precluded from renouncing (y). Executor intermeddling.

The rule of the civil law is *semel hæres, semper hæres*.

A minor, or an infant, may renounce by his By guardian. guardian, appointed by the court for that purpose (z).

A testamentary guardian of an infant or minor renounces on behalf of his ward, and has a preferable right to do so over the other guardian.

The guardian, appointed by the Court of Chancery, of the estate of an infant, may renounce on his behalf.

A mother will be appointed guardian by the

(u) *Wm. Augustus Jaques*, 5 Notes of Cases, p. 295.

(z) *Long v. Symes*, 3 Hagg. 774; *McDonnell v. Prendergast*, 3 Hagg. 214; *Jackson and Wallington v. Whitehead*, 3 Phill. 579; *Rayner v. Green*, 2 Curt. 249; *Munday and Berry v. Slaughter*, 2 Curt. 76.

(y) *Jackson and Wallington v. Whitehead*, 3 Phill. 579.

(z) *Post*, as to Appointment of Guardian.

court to renounce, on behalf of the child or children with which she is *enceinte* at the moment (*z*).

By committee.

A committee of a lunatic, or person of unsound mind, may, on his behalf, renounce probate or administration.

Renunciation by non-appearance to citation.

The non-appearance of a party, having a superior interest, to a citation, if personally served with such process, is equivalent to a renunciation, and is equally binding upon him, and effective (*a*).

The rule of the civil law is, "Si citatus aliquis non compareat, habetur pro consentiente (*b*)."

Renunciation dispensed with.

One of an intestate's next of kin, being a convicted felon and transported during his natural life, was not *required to renounce* (*c*).

Consent.

In certain cases, as we have seen, a renunciation must be accompanied by a consent; in others, a consent alone is required, to lead a grant to a person of an inferior interest.

If a leading grant belong to two persons, one of whom only is inclined to take the further grant, his renunciation and consent will enable his co-partner to take it alone.

Retraction.

Under certain conditions, a renunciant is

(*z*) *John Wilmshurst*, August, 1830.

(*a*) Vide Coote's "Ecclesiastical Practice," p. 764.

(*b*) *Mascard de Prob.* vol. 3, p. 253.

(*c*) *Joseph Lawrence*, deceased, June, 1825.

allowed by the court to retract his renunciation, being held not to be bound by his waiver for all time.

But this state of the law appears now to be abrogated, as regards the executor.

By the 79th section of the new act, it is enacted, that "where any person, after the commencement of the act, renounces probate of the will of which he is appointed executor, or one of the executors, the rights of such person, in respect of the executorship, shall wholly cease, and the representation to the testator, and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor."

The effect of this enactment is not only (as we have before stated at p. 50) to give to the proving executor the right of transmission by survivorship, but to debar the renunciant executor from retracting his renunciation *quâ* executor.

There is nothing, however, to prevent his retracting his renunciation *quâ* residuary legatee, if he has renounced in that character also, and taking administration (with the will annexed) *de bonis non* (d).

If administration, with the will annexed, has been granted to a legatee or creditor, on the renunciation of the residuary legatee, he is

(d) Vide page 52, in note.

allowed, *upon the death* of the administrator, to retract his renunciation and take administration (will) *de bonis non*, though opposed (*e.g.*, by a creditor) (*d*).

And so in the case of a simple administration granted to a person entitled in distribution, or to a creditor, on the renunciation of the next of kin, the latter may, on the administrator's death, retract and take administration *de bonis non* (*e*).

In all cases of renunciation, save in that of an executorship, on the death of the renunciant his representative may take a grant to the same deceased, without retraction, for a renunciation, except in the case of executorship, does not bind representatives (*f*).

But the retracting party may only take administration in the form in which it was originally granted, particularly if a consent on his part has accompanied the renunciation. So, where on the next of kin renouncing and consenting, administration was granted to a creditor for the use of the widow during her lunacy, the court would not, on the death of the administrator, allow one of the next of kin who retracted to take an absolute grant of administration *de bonis*, but gave him one limited as before.

The renunciant may retract before administra-

(*d*) *Dimes v. Cornwell and Lyon*, 7 Notes of Cases, p. 381.

(*e*) *Skeffington v. White*, 1 Hagg. E. R. 702.

(*f*) *Thos. Newton Penny*, 1 Robertson, 426.

tion has passed the seal, unless the circumstances be such as to justify the court in refusing to allow such retraction.

In one case the court, where the next of kin had renounced, in order that a creditor might take, and one of them applied to be allowed to retract before administration passed the seal, refused to permit it, and held them to their renunciation (*g*).

Refusal, shown by non-appearance to a citation, requires no retraction. The party so refusing may, on the death of the administrator, come in and take a grant *de bonis non*. He is, however, subject to precisely the same rules which regulate a retraction, and has no more privileges than the person who has renounced in form.

SECTION IX.

JOINT GRANTS.

In the case of executors, the reader will have Joint grants. observed, that all who have been nominated by the testator may take probate without any restriction. The choice of the testator determines the court, and the latter has no power to limit the number of those who shall act, whatever

(*g*) *West and Smith v. Willby*, 3 Phill. 374.

may be the inconvenience which may arise from their conjoint action.

To residuary legatees in trust.

In the case, also, of residuary legatees in trust, the court *formerly* paid regard to the joint tenancy and would grant to all, and not to one, or some of them, unless the other or others renounced.

To testamentary guardians.

So, also, in the case of testamentary guardians, (*vide post*,) the court will grant to all and not to one, unless the other or others renounce, on the same principle of joint tenancy.

Joint grants limited to three persons.

But all other cases of administration (simple or with a will annexed), the court is free to follow its own rules, and as it has seen the inconvenience and mischief of many representatives, it has limited their number to three, beyond which, it will not, in ordinary cases, go.

The court prefers a sole grant.

But the court at all times prefers a sole administration to a joint administration (*h*). And acting upon this rule it grants administration *primo petenti*, *i. e.*, to that next of kin, (where there are several,) and to that residuary legatee (where there are several) who first applies (*i*). And inasmuch as the court grants to such applicant the *universum jus successionis*, it cannot reserve power to others equally in-

Primo petenti.

(*h*) *Warwick v. Greville*, 1 Phill. 126.

(*i*) It is said to do so in accordance with the civil law rule, *qui prior est tempore potior est jure*. But this cannot be its inducement, as that text applies to the dates of *hypothecæ*, not of the petitions of applicants.

terested in the estate, nor can it make a further grant until the death of the administrator leaves the estate again vacant. No consent or renunciation is required from his equals in grade; his superior diligence entitling him to the grant. Primogeniture and full blood are not regarded or inquired into.

But it is obvious that one next of kin or one residuary legatee will not on all occasions be able to snatch a grant, or even be willing so to do, for there may be others in the field who are desirous of being joined. In such a case, the court will join them in the same administration.

The power of administration accrues to the survivor, and until his death no further grant ^{Survivorship of joint grantee.} can be made (*k*).

On the consent of both, the court will join a widow with one of the next of kin, and a residuary legatee for life with the substituted residuary legatee (*l*). ^{To widow and next of kin, &c.}

The consent of the widow must be express, and not merely a non-dissent (*m*); and the court has refused to grant administration to a widow and daughter jointly, where the widow, by counsel, declared her readiness to

(*k*) The grant to a married woman is made to her solely, and does not survive over to her husband if she predeceases him.

(*l*) Sometimes an affidavit has been required to show a necessity for such a grant being made, but latterly such an affidavit has been dispensed with.

(*m*) *George Barras*, 2nd August, 1855.

submit to the decree of the court, but did not consent.

The court will join two next of kin of different denominations, *e. g.*, a great niece and a cousin german (n).



SECTION X.

RIGHT OF THE COURT TO SELECT AN ADMINISTRATOR.

One applicant selected by the court *e pluribus.*

But it may occur that the parties are not willing to act together; on the contrary, it may be the wish of the one to exclude the other.

In such a case, it is incumbent upon the contending parties to set up and prove unfitness on the part of his opponent, and the court is then called upon to exercise its discretion.

Lunatic or imbecile executor not

In regard to *executors*, one executor cannot, with effect, dispute the title of the other to be joined in the probate, either on the ground of his insolvency, or even upon a conviction for felony. By the English law, the testator's choice is considered to overrule all such objections. But he may object or refuse to be joined with his co-executor, if he is a lunatic, an idiot, or imbecile; and the court will exclude such lunatic

(n) *Theodora Garland*, 5th December, 1843 (on motion).

or imbecile executor from the probate, if the ^{joined in} objection be proved (o). _{probate.}

The next of kin may contest administration ^{Widow ex-} with a widow; they do so under the power of _{cluded.} election given to the court by the 21 Hen. 8, c. 5 (p); but the ordinary practice being to grant administration to the widow, her unfitness must be shown before a grant will be made to the next of kin.

But otherwise, in order to be able to contest a grant, the parties contending must be *in eodem gradu*, and they must be in a position to take the grant which they seek to have disallowed in the other. They must be next of kin contending against next of kin, or residuary legatees contending against residuary legatees (q).

Where objections exist against one of the parties applying for a grant of administration, the court will not *force* a joint administration upon unwilling parties, *i. e.*, it will not compel an unobjectionable person to become a joint administrator with the former (r).

The grounds of objection are, badness of ^{Grounds of} character, bankruptcy or insolvency (s), or ex- _{objection.} treme want of health; and if these grounds be satisfactorily established, the court will exclude

(o) *Evans v. Tyler*, 2 Robertson, 131.

(p) *Atkinson v. Lady Ann Barnard*, 2 Phill. 317.

(q) *Ibid.*

(r) *Bell v. Timiswood*, 2 Phill. 23.

(s) *Ibid.*

the objectionable applicant, and give administration to the other party.

If the next of kin be a married woman, objections may be taken to her husband.

Or, should one of the applicants have an interest incompatible with the due administration of the estate, the court will pass him over, *e. g.*—

Where a question was likely to arise between the estate and a son of one of the applicants respecting the validity of a gift, the court excluded that next of kin on the ground that the claims of the estate might not be strongly asserted by the father against his son^(t).

In another case^(u), the court would not join a married woman, when, by so doing, it might defeat a trust created for her by the testator, by giving her the property in question, which she and her husband might dissipate.

But this state of things may not exist. Neither party may be objectionable on the grounds which we have mentioned, or at least the objections may not be established.

Joint grant
not forced.

But even then the court will not force a joint administration upon an unwilling party, and will be influenced by other reasons, to make a single administration^(x). For the disagreement of per-

(t) *Budd v. Silver*, 2 Phill. 116.

(u) *Dampier and Dampier v. Colson*, 2 Phill. 55.

(x) *Ibid.*; *Bell v. Timiswood*, 2 Phill. 23.

sons, whom the law contemplates as acting together, would render their joint action inconvenient, and, perhaps, defeat the just administration of the estate (*y*).

Therefore, where legal objections do not apply, the court will select the benefit of the estate (*z*), when there are no legal objections. to that of the persons interested in the property.

It is therefore open to contending parties to influence the court by showing superior aptitude for the office of administrator.

Where two next of kin, or two residuary legatees contend, and are both legally unobjectionable, the court prefers the one who is a man of business, to the other who is not (*a*). It also prefers the one on whom the majority of the other next of kin fixes (*b*).

Preference of next of kin and residuary legatees *inter se*.
Grounds of selection.

The union of creditor and next of kin in the same person, is rather adverse than favourable to his claim to be preferred (*c*).

But the wishes of creditors will have the consideration of the court when their demands are heavy, and the insolvency of the estate is

(*y*) *Warwick v. Greville*, 1 Phill. 126; in *Prentice v. Prentice*, 3 Phill. 312, Sir J. Nicholl said, "This court never forces a joint administration, unless the parties agree to it."

(*z*) *Warwick v. Greville*, 1 Phill. 125.

(*a*) *Williams v. Wilkins*, 2 Phill. 100, 101.

(*b*) *Ibid.*; *Dampier and Dampier v. Colson*, 2 Phill. 55; *Jones v. Rushall and others*, 13th March, 1856.

(*c*) *Webb v. Needham*, 1 Add. 498.

apprehended (*d*); and although primogeniture gives no rights, if things are precisely equal; if the scale is exactly poised, being the elder brother, would incline the balance (*e*).

Preference of
creditors
inter se.

If creditors contend *inter se* for administration (will), or administration, the court will prefer one having a judgment debt (*f*), or a specialty debt, or a debt of a larger amount (*g*), than the other creditors can show.

The court has preferred a simple contract creditor having a large debt against the deceased, to a judgment creditor under 1 & 2 Vict. c. 110, s. 18 (*h*).

It is probable that the court would prefer *on a contest*, a creditor to a legatee, though otherwise in practice both are equally entitled.

Preference of
guardians
inter se.

Similar or analogous contention may arise between guardians of minors' children, and the court will be called upon in these cases also to exclude and select.

From the above it follows, that the court (though it will make a joint grant to willing parties) will not, under any circumstances, make such a grant to parties who are unwilling to be

(*d*) *Warwick v. Greville*, 1 Phill. 127.

(*e*) *Ibid.* 125.

(*f*) *Carpenter v. Shelford*, 2 Lee, 503.

(*g*) *Kearney v. Whitaker*, 2 Lee, 325.

(*h*) *Ernest v. Eustace*, 22nd November, 1856. By Sir John Dodson.

joined, but the court will either grant administration alone to the party who being himself unobjectionable, has established an objection against the other, or should both parties be unobjectionable *per se*, the court will grant a sole administration either to that one who has the majority of interests, or, should the interests be equally divided, to that one who has a point of peculiar aptitude on his side, however slight or unimportant it may be in itself.

There is an exception, however, to this rule. Exception.

If one of two or more administrators apply for administration to a deceased, whom his deceased was entitled to represent, the court will not grant administration to him singly but to all. On this Sir H. J. Fust observed (i), "The court never forces a joint administration, that parties may not have reason to complain of the inconveniences which may result from there being more than one administrator; but where the parties have chosen to be joined in the administration, the court will not relax a practice which has prevailed and been found useful."

(i) *F. Naylor*, 15 Jurist, p. 686.

CHAPTER III.

LIMITED GRANTS.

Limited
grants.

IN the forms of grants which have been described, the power given to the grantee not only reaches to and extends over the whole personal estate of the deceased, lying within the jurisdiction of the court, but in the case of the executor taking probate, (while under all conditions it must continue in force so long as his life lasts,) it also is transmissible, under certain conditions, beyond his life; and in the case of administrators, under all conditions, it endures as long as the life of the grantee.

But cases also occur where the circumstances are such as not to warrant the court to make a permanent grant, or where the title of the applicant itself, though general, is not absolute or unqualified, and a necessity is consequently imposed upon the court to give to the grant a corresponding modification, while, at the same time, the power of collecting and administering is given as extensively as in the instances first mentioned.

Grants
limited in
duration.

The form of limitation in these grants is of time or duration only; a certain period or con-

dition being specified, at or upon which the grant ceases and determines. In all other respects the grant is general and unfettered.

There are cases also where the applicant's interest is of so limited a nature as to give no title to the administration of the deceased's estate beyond a particular portion. In this case the court, while it grants to such person probate or administration, must limit the power of the grantee to his interest, and so exempt the general estate from his intermeddling. In these cases the property to which the grant is limited may be either the deceased's own estate, or his legal interest merely in the estate of another person.

Grants limited to particular property.

There are cases also of a close affinity to the grants last described, where the interest of the applicant is confined to making or continuing the deceased as a party in a law suit. In such cases, the court will grant to a nominee of the applicant an administration limited to the purposes of the suit.

Limited to a particular object or purpose.

In grants of these descriptions, the representation of the deceased, though perfect so far as it extends, is only fragmentary as regards the entire succession, and other grants will be required to fill up and perfect the deceased's representation to all intents and purposes.

Other grants required to perfect the representation.

SECTION I.

GRANTS LIMITED IN DURATION.

Grants
limited in
duration.

We will first consider the subject * of the grants which are general in their power, but limited in their duration.

Probate of a
copy of a lost
will.

When an original will or codicil, or both, have been lost or mislaid since the testator's death, but a true or collated copy has been preserved, the executor may take probate of such copy limited until the original or an authentic copy of it be brought into the registry.

But he must produce proof by affidavit, that the original was duly executed ; was in existence after the testator's death, and has been since lost. Under precisely the same conditions probate is granted of the draft of a will or codicil (a).

Probate of
substance or
contents.

When an original will has been lost or destroyed, after a testator's death, and no draft has been preserved, and no copy has been made, probate may be obtained of its contents, or of its substance and effect, if they can be established by credible evidence.

Mode of
establishing
substance or
contents.

The validity of the execution must be shown, as well as the substance or contents. The witnesses to establish these points must be the subscribed witnesses ; or the drawer and writer ;

(a) *Edward Herringham Butts*, deceased, 2 Spinks, 59.

or persons who have read the will and have made themselves cognizant, more or less, of its tenor. Proof or vehement presumption must be adduced, that the will was in existence after the testator's death; or, if that cannot be shown, that it is impossible that the testator could have himself destroyed it, or caused it to be destroyed. This evidence, however, when given *ex parte*, is not sufficient of itself to induce the court to allow probate. In a matter of such delicate cognizance as this, the court will require the consent of all the persons who would have been entitled to the personal estate of the deceased in case he had died intestate. If this cannot be obtained, the executor must cite them to show cause why probate of the substance of the will as contained in an affidavit (such as was referred to) should not be granted to him, limited until the original will, or an authentic copy, shall be brought into the registry of the court (*b*).

If they do not appear, the court will decree probate limited, as before mentioned, in their default.

If a codicil has been similarly lost or destroyed, its contents may be proved in the same manner.

Contents of
lost codicil.

The consent of the residuary legatee, under the will, will be required. Should there be no

(*b*) *Henry Goodinge*, deceased, August, 1827; *Anne Prebble*, deceased, September, 1827; *John Richards*, deceased, February, 1840; *James Wright*, deceased, November, 1841.

residuary legatee, or should the bequest of the residue have lapsed, the next of kin of the testator must consent.

If the executor be the residuary legatee, his application for probate will be an implied consent.

The practice of the court, in its selection of what shall go forth to the world as the exponent of the testator's lost will, has varied.

Affidavit of
scripts
proved.

Deposition
of a witness,
or extract
from it
proved.

Sometimes the court has granted probate of an affidavit of scripts (filed in the suit), and at other times of a deposition, or an extract from a deposition of a witness, as containing the contents or substance, or effect of the lost will or codicil (c).

Probate of
a will limited
until a lost
codicil be
found.

If a codicil has been lost since the testator's death, without a copy having been made, or a draft kept, and its contents or substance cannot be shown, the court will grant probate of the will limited, until the original codicil, or an authentic copy thereof, shall be brought in.

Probate of
a codicil
limited until
a lost will
be found.

So, if the will has been lost since the death of the testator, and there exists the same inability to record its contents or substance, and a codicil be found, the court will grant probate of the codicil in like manner.

Probate of a
copy where
the original
is in exist-
ence.

Where the original will or codicil, or both, are in the possession of a person residing abroad,

(c) *Edward Trevelyan*, deceased, (deposition,) September, 1810; *Thomas Hendy*, (affidavit of scripts,) February, 1815; *Edmund Thorp*, (affidavit of scripts,) July, 1825; *Baron Wood*, June, 1831.

who has refused or neglected to deliver them up, but a copy has been transmitted to the executor, a probate of such copy will be granted to the executor, on his showing, by affidavit, the manner in which such copy was transmitted, that a better or more authentic copy does not exist in Great Britain, and that it is essential or necessary for the interests of the estate that probate be forthwith granted, without waiting for the arrival of the original, or a better or more authentic copy.

If the copy has been transmitted to a person other than the executor, he will be required to join the executor in the affidavit.

The affidavit does not go into the execution of the will or codicil, as in the case of lost or destroyed instruments of that nature (*d*).

When the grants before described are made to a residuary legatee, or any other than the executor, they take the form of letters of administration (with the will annexed), limited in the same manner.

If a residuary legatee be appointed during widowhood, the grant is limited so long only as she shall continue a widow (*e*).

(*d*) A copy of a will, the original of which is preserved in the *Chancellerie*, or archives of a Levant consul, is treated as an unauthentic copy, though it be made by the registrar, and certified by the consul himself. And the order in council of the 27th August, 1857 (published in the Gazette, 2nd October, 1857), does not appear to give any legal sanction to such copies.

(*e*) *Thomas Tesd*, 7 Notes of Cases, p. 386.

Adminis-
tration, with
the will an-
nexed.

Adminis-
tration (will)
during
widowhood.

Admini-
stration to the
next of kin
until the ori-
ginal will be
found.

We have seen, that the person who applies for letters of administration is required to swear that the deceased died without having made a will. It sometimes happens, though no will is forthcoming on the death of the deceased, that the party cannot in conscience take the oath, for he may know, or have reason to believe from the deceased's observations, or the information of others, that there was a will in existence subsequently to the deceased's death.

If he cannot produce even a copy of the will, or substantiate its contents or tenor, he may take administration limited until the original or a copy be brought in.

SECTION II.

GRANTS FOR THE USE AND BENEFIT, "*JUS HABENTUM*."

Grants for
the use and
benefit *jus*
habentium.

The cases which we have last considered refer to grantees, who have themselves the interest in the estate, or who take in their own right.

But the court will not stop here. It will go further, for the protection of an estate.

Where one or more persons, who have a right to administration, or a beneficial interest in the

estate of the testator or intestate, are precluded from personally acting, by residence out of the jurisdiction of the court, by their own minority, or by their lunacy or imbecility, the court will make a grant to another person for the use and benefit *habentium jus seu interesse*, but limited in duration to such a period as the circumstances of the case demand.

These grants, though out of the statutes of Edw. 3 and Hen. 8, have been held to be within the equity of these statutes, being for the ease and convenience of the subject (*f*).

If the executors reside out of the jurisdiction of the court, they may appoint an attorney to prove their testator's will, in their name and on their behalf. But if the attorney be appointed by only one of such executors, the court will not make a grant to him until the other executors have all renounced, or have been cited.

Administration (will) to the attorney of all the executors for their use and benefit. *Secus*, the non-appointed executors must renounce or be cited.

The attorney must reside in England (*g*).

Letters of administration, with the will annexed, of all and singular the goods, chattels, and credits of the deceased, are granted to the attorney for the use and benefit of his constituent, and until he shall duly apply for and obtain probate of the will to be granted to him. The power of attorney is filed (*h*).

(*f*) *P. Williams*, vol. ii. pp. 589, 590.

(*g*) By direction of Sir J. Dodson (May, 1857).

(*h*) *Jas. Cassidy*, deceased, 4 Hagg. E. R. 361.

The grant determines by the executor returning to this country and taking probate.

If the letter of attorney contain a power of substitution, and the attorney exercises it, the substitute may take the grant.

Grant to the attorney of one residuary legatee, *s. pluribus.*

The attorney of one of many residuary legatees may take administration (will) without notice to the other residuary legatees.

Grant to the attorney of one next of kin *s. pluribus.*

The attorney of one of many next of kin may take administration in like manner, without notice to the other next of kin.

The limitation in the two last-mentioned grants is, *mutatis mutandis*, the same as in the one which was first mentioned, and the grants will determine in a like manner.

Grants for the use and benefit of minors.

If a sole executor or a sole residuary legatee be under age, the court will protect his interest until the epoch of his majority, by making a grant of administration, with the will annexed, to some person for his use and benefit, until he shall attain the age of twenty-one years.

There is now no distinction between the infancy or minority of an executor and the infancy or minority of a residuary legatee or next of kin, for by the 6th section of 38 Geo. 3, c. 87, it is enacted, "that where an infant is sole executor, administration (with the will annexed), shall be granted to the guardian of such infant, or to such other person as the spiritual court shall think fit, until such infant shall have attained the full age of twenty years, at which

period, and not before, probate of the will shall be granted to him."

And the section following provides, "that the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin."

The person entitled in preference to all others is the testamentary guardian, *i. e.*, the guardian appointed by will or deed of the father, under 12 Car. 2, c. 24, ss. 8, 9. To the testamentary guardian.

Next in order is the guardian of the estate (not the person) of a minor, appointed by the High Court of Chancery. To the guardian appointed by the Court of Chancery.

In the first case, a reference to the father's will, as proved, is required. In the other case, an office copy of the order or decree appointing the guardian is filed in evidence of his title.

Neither of these guardians is required by the court to file any inventory of the deceased's effects for the protection of their ward, the trustworthiness of the one being vouched by the father, and the other being accountable to the court which has appointed him. No inventory required from these guardians.

The court will not grant to one, out of many testamentary guardians, without the consent of the others, on account of their joint tenancy. The court will not grant to one testamentary guardian without the consent of the other.

The court will grant to a guardian appointed by a Scotch, Irish, or foreign court, competent To a guardian ap-

pointed by a
Scotch, Irish
or foreign
court.

for that purpose; but such guardian must prove his appointment by an authentic copy of the decree by which he has been nominated.

To guardian
appointed by
the court.

If there be none such, the court will itself appoint a curator or guardian for the purpose of taking the grant.

To guardian
of minor.

The form is as follows:—If the executor or residuary legatee be above the age of seven years but under the age of twenty-one, he is styled a minor, and has the privilege of electing any one of his next of kin to be his curator or guardian. This is done by the minor, either in an instrument signed and delivered by him in the presence of two attesting witnesses, or by his election, expressed *vivâ voce in curia*, i. e., before the judge or his surrogate.

If the minor be a *feme covert*, she elects her husband.

The party so elected accepts the curation or guardianship in the same manner, and on the production of the two instruments called proxies, or upon the declarations *vivâ voce* being made, the court appoints the minor's next of kin or husband (as the case may be), curator or guardian to the minor *pro eâ vice*, and decrees the grant to be made to him for the use and benefit of the minor, until he or she shall attain the age of twenty-one years.

To guardian
of infant.

If the executor, residuary legatee or next of kin, be under the age of seven years, he is

styled an infant, and is considered to be incompetent to elect a guardian. But upon the infant's next of kin expressing his willingness to accept the appointment of guardian, he is appointed such "by virtue of the office of the judge," as it is termed, on account of the appointment emanating solely from the authority of the court.

The appointment by the testamentary court is the most frequent in practice, the more especially as the court is not *bound* to take notice of the existence of other guardians, unless the fact be brought specially before it.

This may occur in a case where the executor named in the will of the testator is also appointed testamentary guardian of the testator's children, who are the residuary legatees.

If a grant is sought for the use of the residuary legatees (minors), to their next of kin, on the renunciation of such executor, the court will require him not only to renounce the probate of the deceased's will, but also the letters of administration (with the will annexed), which he might take as the testamentary guardian of the residuary legatees.

The guardian appointed by the court is required to exhibit an inventory (or rather a declaration, which is a mere summary) of the deceased's estate and effects, before the grant will be allowed to pass the seal to him.

Testamentary guardian renouncing.

Inventory required from guardian appointed by the court.

Though we have made reference to the case of a sole residuary legatee, or a sole next of kin, the same observations apply also to those cases where there are several.

All the minors must elect, or dissentient must renounce.

In the last-mentioned cases all the minors must join in the election of the guardian. If there be a dissentient, he must renounce administration by his guardian (elected by him, and appointed by the court *pro eâ vice*), or he must be cited. But this rule is occasionally relaxed.

Minor passed over.

Where one out of a numerous family is prevented by residence or absence abroad, from joining, the court, on affidavit, will pass him or her over, and will give administration to the guardian appointed by the other minors, for the use and benefit of all of them (i).

Minor cited.

If the minor be cited (*viz.*, to accept or refuse the proposed grant, or show cause why it should not be made to the guardian of the other minors), and does not appear to the citation, the practice is to grant to the guardian of the others, for the use and benefit of all (k).

Grant when determined.

A grant for the use and benefit of two or more minors and infants is made until one of

(i) This is the *practice*, but it is clearly an error, "use and benefit" being equivalent to the expression "on the part and behalf of."

(k) See *Spriggs v. Banks*, 4 Notes of Cases, p. 103.

them shall attain twenty-one years, and should some of them die before that age, it ceases when the eldest survivor attains it.

The minor's and infant's next of kin, as we before stated, have the preferential right of assuming their guardianship; and as we also before stated, minors and infants are under a corresponding obligation to elect their next of kin for such purposes, in preference to all others.

It is, however, in the choice of the next of kin to assume such guardianship or not. They may renounce it in the case either of infants or minors (l). The next of kin may renounce the guardianship.

If so, the court, on their election, appoints a stranger in blood, or a distant relative, according as the choice of the minors falls; and on the party chosen accepting the appointment, he is assigned guardian accordingly, and administration is decreed to him. A stranger in blood may then be elected.

But the court is not concluded by the choice of the minors; it has a discretionary power to refuse to grant administration to the person elected by them (m). The court not concluded by the minor's choice.

Of course the court must have grounds for

(l) *Richard Widger*, 3 Curt. 56. All the next of kin should do so. But in *Widger's* case, the court granted administration to the stepmother of the executor (a minor), on his two sisters (his next of kin) renouncing the one in due form, and the other without the sanction of her husband, and it being shown that his elder brother (his other next of kin) had not been heard of for many years.

(m) *West and Smith v. Willby*, 3 Phill. 379.

such a refusal; but if a minor be nearly of full age, it is probable that the court would hold itself to be concluded by his election.

Minor may refuse to elect his next of kin on ground shown.

But if ground of objection exists against the minor's next of kin, the minor is not, in that case, bound to elect him; and the court will, if the objection be sound, pass him over and appoint a stranger in blood, or a more remote kinsman, to be guardian.

A foreign domicile, or protracted absence from this country, or a long-continued and virulent enmity, provoked or unprovoked on the part of the minor, from which he may have reason to fear calamitous consequences,—bad reputation and incapacity for business, would justify the minor in refusing to elect, and the court in passing over the next of kin.

Minor a bastard or without relations, &c.

If the minor or infant is a bastard, or has no known relations, notice must be given to the Queen's proctor, and if he takes no objection the court will confirm the minor's choice of any person whom he thinks fit to choose for his guardian, and will grant administration accordingly.

Stranger joined with next of kin.

The number of guardians must not exceed three. They need not always be persons in an equal degree, for the court will occasionally join a stranger in blood with a next of kin, but special grounds must be shown for so doing.

A more distant relative and a stranger will be joined on the consent and renunciation of the next of kin. Distant relative and stranger joined.

If a guardian administrator, in his representative character, take a grant of administration to the effects of another deceased person, such grant is made in like manner for the use and benefit of the minor on whose behalf he took his original administration, and will cease on the minor coming of age. An inventory must be exhibited by him in this, as in the other, administration. Guardian administrator taking grant as a representative.

And the exemption of the testamentary guardian from giving an inventory applies not only to the administration (will), which he takes of the estate of the testator's by whom he was appointed; but if, by virtue of such grant, he becomes the representative of any other deceased, he is also exempted from giving an inventory of that estate.

Where the *jus habens* is incapacitated from the transaction of business by reason of his lunacy, imbecility, or unsoundness of mind (o), the court will, as we have intimated, make a grant for his use and benefit in analogy with the case of minority. For the use and benefit of a lunatic executor.

(o) The expressions in Oughton would seem to warrant the court in making a grant during the bodily incapacity of an interested party. He says (1 tit. 219, s. 1, n. a), "durante corporis aut animi vitio."

To committee of executor.

In the first place, if a sole executor be a lunatic, the court will grant administration (with the will annexed) to the committee of his estate, for his use and benefit, until he shall become of sound mind.

If there be two committees, both must take or one must renounce.

No inventory is required from the committee, and his sureties do not justify.

The production of the commission proves the committee's title, and also the lunacy of his ward.

The court will grant similarly to a Scotch curator, or a committee appointed by a foreign court. These latter do not exhibit an inventory, and their sureties do not justify.

To the residuary legatee for the use of the executor.

If the executor be nude, and has no committee, it is not usual to grant to his next of kin for his use and benefit; but the court will grant to the residuary legatee, appointed by the will of which the other is executor, for the use and benefit of the executor, &c. The grantee files an inventory and gives justifying security.

Affidavit as to the lunacy.

When no commission has been taken out, the testamentary court will satisfy itself as to the lunacy, by calling for a joint affidavit of the surgeon or physician keeping or regularly visiting the asylum where the patient is confined, and of the keeper or nurse. The applicant for the grant must also make affidavit tha

no committee of the lunatic's estate has been appointed, and that it is expedient or necessary that a grant be made.

If the residuary legatee be a lunatic (there being no executor), the court will grant administration (with the will annexed) to a committee of his estate, if he have one, or to his next of kin, for his use and benefit, &c.

To the committee or the next of kin of a residuary legatee.

The next of kin will exhibit an inventory and give justifying security.

In the case of an intestacy, the court will grant to the committee, if there be one, or to the next of kin of the sole next of kin or husband of the intestate (as the case may be), under precisely the same regulations and conditions as apply to the other cases.

In case of intestacy.

If there be a person entitled in distribution of the intestate's estate, *jure representationis*, the court will grant to him, for the use and benefit of the next of kin, during his lunacy. He exhibits an inventory and gives justifying security.

To a person entitled in distribution for the use of a next of kin.

If the intestate has left a widow, who is a lunatic, the court will pass her over entirely, and will grant to the next of kin absolutely (*o*).

Absolute grant to next of kin where the widow is a lunatic.

If the next of kin in such a case renounce and consent, the court will grant to a creditor for the use and benefit of the widow, &c. (*p*).

To a creditor for the use of widow.

For the manner in which the court treats

(*o*) *J. Williams*, 3 Hagg. E. R. 217.

(*p*) *T. N. Penny*, 1. Robertson, 426.

cases where lunacy has supervened after probate, or administration granted, *vide post*.

Administra-
tion pendente
lile.

By the 70th section of 20 & 21 Vict. c. 77, it is enacted, "that pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate, or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate, and every such administrator shall be subject to the immediate control of the court and act under its direction."

This legislative enactment has restored the ancient practice of the Testamentary Court on this point, as it existed up to the year 1824 or 1825. About that time an injudicious and inefficient practice of limiting such grants to particular parts of a deceased's effects was suddenly introduced, and it has unaccountably continued in vogue down to the passing of this act (g). But it is unnecessary to trouble the reader with any details of this misconception of law.

Lis pendens.

This grant cannot be taken until there is *lis pendens*, and that is said not to be until the allegation or pleading propounding a will, or the interest of a next of kin has been given in and

(g) *Vide* "Law Magazine and Law Review," vol. 4, p. 96.

admitted. The application for such a grant may be made by any or either of the parties in the suit.

The court will make the grant to one of the parties with the consent of the other (*r*), or to a nominee of both when they agree in their nomination (*s*), or jointly to a nominee of each (*t*). To party in the suit.

If the parties cannot agree upon the administrator, but contest the eligibility of each other's nominee, the court will prefer one of such nominees (*u*). Or passing over or rejecting both of them, the court will appoint a nominee of its own, *e. g.*, one of its own officers. To nominee.

The grant is made for the benefit of such persons as shall thereafter appear by law to be entitled to the deceased's estate and effects, and is limited during the dependence of the suit, *i. e.* in the court which granted it. It determines on the termination of the suit in that court, or by the suit being carried up by appeal to a Superior Court.

It may be doubted, however, whether an appeal from an interlocutory order would have the effect of determining the administration. But if it did so, a remission would afterwards revive it.

The Ecclesiastical Court, before the corrup-

(*r*) *P. Schoolmasters of Scotland v. Fraser*, 2 Hagg. E. R. 615.

(*s*) *Northey v. Cock*, 1 Add. 329.

(*t*) *Hellier v. Hellier*, 1 Lee, 281.

(*u*) *Taylor v. Taylor*, 1 Lee, 528.

tion of its practice, which we have referred to, would occasionally except a part of the estate, *e. g.*, the deceased's library (*u*).

Grant, save
and except,
pendente lite.

A grant in this form, being in all other respects general, would perhaps be held to be legal under the new act. It might be wished, for the sake of specific legatees, in a perfectly solvent estate, to except certain effects which the deceased had left *in specie* by his will (*x*).

Limited
grant *pen-*
dente lite.

There is nothing in the act to preclude the court from granting *pendente lite* administration of the effects of a deceased, limited to his interest in property as a trustee only, if the parties to the suit will not take or consent to a general administration being taken of their deceased's estate, the former administration being grantable to different persons, and under entirely different conditions of law (*y*).



SECTION III.

LIMITED PROBATES.

Limited to a
particular
country.

If a testator appoints an executor for the purpose of administering his own estate in any particular country, the latter obtains probate of

(*u*) Rev. Jos. Sanford, Feb. 1775.

(*x*) Vide p. 163.

(*y*) *Ibid*.

his testator's will, "limited so far as concerns the estate and effects of the deceased in that country."

If a testator appoints an executor for the purpose of administering the estate of another testator, whose sole or surviving executor he himself was, probate is granted to him limited for such purpose.

To administer a particular estate.

This probate continues the chain of executorship in that particular estate.

In like manner, if a testator appoints an executor for the purpose of administering the estate of another person, of whom he was sole or surviving trustee, probate is granted to him limited accordingly.

If a testator has appointed a separate executor for the purpose of carrying into effect the trusts and dispositions of a codicil, probate of the codicil, limited to such trusts and dispositions, is granted to him.

Limited probate of a codicil.

If a testator appoints an executor of his will generally, and another executor for particular purposes, and the general and limited executors both apply for probate at the same time, the grant is made in the same instrument, and the powers of each are distinguished; that is to say, probate is therein granted of all the goods of the deceased to the general executor, and of that part thereof to the limited executor to which his executorship is expressly confined.

General and limited probate.

If the general executor applies before the

limited executor, the former takes a general probate, and a power is reserved of granting probate, under limitations, to the limited executor.

Limited probate of will of *feme covert*.

The will of a married woman, made in exercise of a power given to her must be proved. But the court, in granting probate, only inquires whether the testatrix had a power of making a will, and whether the instrument purporting to be an execution of such a power is testamentary or not, (in the words of Lord Brougham, in *Tatnall v. Hankey*,) "whether it is, in fact, a will, if she had the power to make a will," but no further. The court cannot look at the power, and a mere allegation that she had such power is sufficient. The court must grant probate where no objection occurs (z), save such as are connected with the power itself (a).

This grant of probate in practice is limited "to all such personal estate as the deceased, by virtue of the power, had a right to appoint or dispose of, and has, by her will, disposed of accordingly."

It will be seen that, under these circumstances, the court grants, and can only grant, a limited probate (b).

(z) Such as an objection under the 9th section of the Wills Act.

(a) *Tatnall v. Hankey*, 2 Moore, P. C. C. 342; *Barnes v. Vincent*, 5 Moore, 201.

(b) *Scammell v. Wilkinson*, 2 East, 558; *Stevens v. Bagwell*, 15 Ves. 155.

A probate similar in terms is granted, whether the will has been executed by virtue of any deed or will, or by the mere consent of the husband, testified in any manner which can admit of legal proof (c).

But where the husband was a convict felon, a general probate was granted of a will made by the wife, proof being given that the property was acquired after the husband's conviction (d). Exception—probate of will of wife of felon convict.

The court grants a limited probate (as in the case of a *feme covert*), where the testatrix has made her will during coverture, and afterwards becomes a widow and dies without republishing it; as the goods acquired by the testatrix after her husband's death, and during her widowhood, do not pass under such will (e). Limited probate of will made during coverture, and not republished.

Where a *feme* executrix has exercised her right of appointing, by her will, an executor of goods held by herself, *en autre droit*, as executrix, the court will grant probate of such will limited accordingly. And where the will of the testatrix has been made by virtue of a power, or with the consent of the husband, the court will add an additional limitation carrying out this further right. Probate limited to appointing an executor of goods *en autre droit*.

In the goods of "*Sarah Logan*," the probate

(c) *Susan Woolf*, deceased, November, 1846; and see *Maas v. Sheffield and Sheffield*, 4 Notes of Cases, p. 350.

(d) *Elizabeth Martin*, 2 Robertson, 405; and *Esther Lamb*, deceased, February, 1841.

(e) *Scammell v. Wilkinson*, 2 East, 557, 558. As to a general grant in the case of such a will, see p. 60.

was, *inter alia*, "limited to the power which the deceased had of appointing an executor of and concerning the personal estate and effects of *David Birkett* the younger, as the surviving executor named in his will, and which power she had duly exercised, &c. (f).

SECTION IV.

LIMITED ADMINISTRATIONS, WITH THE WILL ANNEXED.

To residuary
legatee,
named in the
will of a
feme covert.

On the renunciation or failure of executor of the will of a *feme covert*, the court will make a grant to the residuary legatee, limited in the same manner as the probate of such a will is limited.

The practice of the court does not seem very clear on this point. Perhaps on an analysis it might seem that the court looks upon the residuary legatee under such a will as the largest legatee, though this is very often not the case.

There seems, however, a want of principle in this, for all legatees under a will, made in virtue of a power, as being participators more or less of one specific sum, are, (except in proportion,)

(f) See the grant, March, 1831, *Birkett v. Vandercom*, 3 Hagg. E. R. 750; *Scammell v. Wilkinson*, 2 East, 558.

on an equality. The legatee of the residue in such a case being like the other legatees, entitled to a specific sum only, can have no surplus, like the residuary legatee of a general estate; and the reader will bear in mind that it is the reasoning founded upon the last-mentioned circumstance, which has given to the general residuary legatee his preference over other legatees (*g*).

If the residuary legatee under such a will, as well as the executor, renounce, the court will grant a limited administration (with the will annexed) to a legatee. To a legatee.

Where the power given by an executor to his attorney to prove a will for him is special, and limited to specific property, the grant of administration (with the will annexed) made to the attorney, is limited accordingly. Limited administration (will) to an attorney.

The court is empowered to exercise its discretion, and make a grant of administration of part of a deceased's personal estate, if it shall think fit, under the circumstances provided for by the 73rd section of the new act (*h*). Limited administration (with the will annexed) under 73rd section.

(*g*) Vide p. 53.

(*h*) See pp. 61 and 93.

SECTION V.

LIMITED ADMINISTRATIONS.

Limited ad-
ministra-
tions.

If no general representation has been or can be obtained of any deceased, the court, *in subsidium juris*, will grant administration to a party or parties having a special interest in the estate of the deceased, and the grant is limited accordingly.

It seems unnecessary to say that legally administration cannot be granted of part of the deceased's own property, unless the succession has been divided by law or statute (i).

Limited to
the pay, &c.
of seaman in
servitio.

It has been stated in a former part of this book, that where the will of a seaman, in her majesty's service, has been made or executed not in accordance with the provisions of the 11 Geo. 4 & 1 Will. 4, c. 20, it is invalid, so far as regards the disposition therein made of his wages, pay, prize-money, &c., and the deceased is in law intestate so far as regards that estate.

So far as regards this partial intestacy, the rights of the widow and next of kin are not affected. The one or the other therefore are entitled to administration, limited so far as concerns the deceased's wages, pay, &c.

Of trust pro-
perty.

If a person has died leaving personal pro-

(i) See "Law Magazine and Law Review," vol. 4, p. 96.

perty, of which he was sole or surviving trustee, the person or persons beneficially entitled to the property may obtain administration limited to that property, either to themselves, or to some person on their behalf.

If the property be a sum of money in the funds, the limitation will include dividends due, and to grow due thereon.

If it be leasehold estate, the grant will be limited to assigning the deceased's interest in the term of years remaining unexpired.

The court follows the deed or will which created the trust, in all points.

If there be a clause authorizing the persons beneficially entitled to the property of which the deceased was trustee, to appoint new trustees in the stead of the deceased trustee, the court will grant administration to a nominee of such persons, limited to transfer the property to the new trustees, and for the purpose of carrying the trusts into execution.

To nominee of persons beneficially entitled, to carry out the trust.

If no such provision exists, the court grants to the sole *cestui que trust*, or if there be more than one, to one of them, with the consent of the others, or to a nominee, or third person, elected and appointed by all of them.

To persons beneficially entitled, or to their nominee.

This grant is limited to the right, title and interest of the deceased in the property in question.

If only some of the parties elect, the grant will be made to their nominee to the extent of

their shares, and the dissentient party or parties are at liberty afterwards to apply to the court for a grant limited to the remaining shares of the fund.

If the party applying be only entitled to a life interest in the fund, the grant will be limited to the receipt of the dividends, or other produce of the fund, during the annuitant's life.

Those persons who are entitled to the general representation, though they have no interest in the property in question, must renounce, or consent, or be cited; that is to say, where the deceased left a will, the executor and residuary legatees; and where he died intestate, the next of kin (*k*). The renunciation of the executor is necessary; a consent from the others is sufficient.

By the old practice, administration of a trust estate was always granted without the next of kin either renouncing or being cited. As they had no interest in what was not the deceased's own property, they were not entitled to notice.

Whether the deceased died testate or intestate, the court grants administration *without the will annexed*, as the object of the representation in no way interferes with the administration of the deceased's own estate.

The estate is sworn under 50*l.*, but security is given in double the amount of the actual estate to be administered.

(*k*) *Thomas William Barker*, 1 Curt. 592.

When it is necessary that the representative of a deceased person be made a party to a pending suit in Chancery, but the executors or next of kin of such person will not qualify themselves as his representatives, the court will grant administration to the nominee of a party in such suit limited, "to attend, supply, substantiate and confirm the proceedings already had, or that shall or may be had in the said suit in the high Court of Chancery, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching or concerning the matters at issue in the said cause or suit, and until a final decree shall be had and made therein, and the said decree carried into execution, and the execution thereof fully completed."

Administration limited to a suit in Chancery.

The court will equally grant administration to the nominee of a plaintiff, or who is about to commence proceedings.

Under no circumstances can the grant be general (1).

Where an official assignee's bond for the fulfilment of his duties has been directed by a Commissioner in Bankruptcy to be put in suit against the obligors, and actions have been brought accordingly in a Court of Law, but have abated by the death of one of them, the court will grant administration of the effects of

To actions at law.

(1) *A. Chanter*, deceased, 1 *Robertson*, 274.

such obligor limited for the purpose of supplying, substantiating, and confirming the proceedings already had, or commencing and prosecuting such other proceedings, either at law or in equity, as may be necessary, in putting the bond in suit, and finally giving a legal discharge for the amount recovered, but no further, or otherwise, to the nominee of the Commissioner in Bankruptcy (*m*).

Administra-
tion during
absence of
acting exe-
cutor.

By the 38 Geo. 3, c. 87, s. 1, ("An Act for the Administration of Assets in cases where the Executor to whom Probate has been granted is out of the Realm,") it is provided that, "at the expiration of twelve calendar months from the death of any testator, if the executor or executors to whom probate of the will shall have been granted, are or is then residing out of the jurisdiction of his majesty's courts of law and equity, it shall be lawful for the Ecclesiastical Court, which hath granted probate of such will, upon the application of any creditor, next of kin or legatee, grounded on affidavit hereinafter mentioned, to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment stamped only with one five-shilling stamp, and shall pay no further or other duty to his majesty, his heirs or successors."

(*m*) In the goods of *Edmund Hobson Vitruvius Laws*, deceased, 15th January, 1855.

And it is provided by the 2nd section, "that the party applying to the spiritual court to grant such administration as aforesaid, shall make an affidavit in the following words, or to the purport and effect following:—

"I, A. B., of , do swear that there is due and owing to me upon bond, or simple contract, or upon account unsettled, as the case may happen to be, (in which latter case he shall swear to the best of his belief only,) from the estate and effects of deceased, the sum of , and that C. D., the only executor capable of acting, and to whom probate hath been granted, hath departed this kingdom, and is now out of the jurisdiction of his majesty's courts of law and equity; and this deponent is desirous of exhibiting a bill in equity in his majesty's Court of , for the purpose of being paid his demand out of the assets of the said testator."

And by the 3rd section it is provided, that there shall be granted under such circumstances administration "limited for the purpose to become and be made a party to a bill or bills to be exhibited against the administrator in any of his majesty's courts of equity, and to carry the decree or decrees of any of the said court or courts into effect, but no further or otherwise."

The act also prescribes the exact form of the administration.

The act extends to executors residing in Scotland (*o*).

It does not apply to an executor of an executor.

The administration will be granted either to the party designated in the statute, or to his nominee.

Administra-
tion during
the absence
of the admi-
nistrator.

By the 74th section of the 20 & 21 Vict. c. 77, the provisions of the 38 Geo. 3, c. 87, are made applicable (in like manner) "to all cases where *letters of administration* have been granted; and the person to whom such administration shall have been granted, shall be out of the jurisdiction of her majesty's courts of law and equity."

Letters *ad*
colligendum.

The court is not bound to wait for the application of persons entitled to the estate (*ex testamento* or *ab intestato*), but when it may be endangered by delay in administering, the court will make a grant for the purpose of its preservation, without regard to the interest of the party applying (*p*).

This form of grant is now obsolete, the court preferring to grant letters of *administration* for the collection or preservation of precarious or perishable property, in cases where it is expedient that its authority should be invoked without delay.

(*o*) *Rev. Cavalier Jouet and Hannay v. Taynton*, 2 Add. 504, 505.

(*p*) *Walker v. Woollaston*, P. Wms. vol. ii. 584.

In the goods of "*Mary Radnall*" (q), the court granted administration, "limited to the collection of all the personal property of the deceased; and giving discharges for all the debts which might be due to her estate on payment of the same; and doing what further might be necessary for the preservation of the property aforesaid; and to the safe keeping of the same, to abide the directions of the court." Administra-
tion ad col-
ligenda bona.

The grant was made after citing the brother. The grantee had no right or interest in the estate, but had been the deceased's agent, and the brother had precluded himself from administration, by entertaining conscientious scruples respecting the taking of an oath.

The grant, it is believed, was never sealed.

In like manner administration has been granted, limited to the sale of a ship, and to the protection of the cargo, and other matters relating thereto (r).

Where a foreigner died in London away from his relatives, possessed of certain bills of exchange upon English merchants, the court granted administration to an English friend or acquaintance of the deceased, (who had procured the bills to be accepted, and had paid certain necessary expenses of the deceased,) "limited to the sums due and to become due on the bills of exchange; and, after the administrator should

(q) 2 Add. 233.

(r) *George White*, deceased, November, 1832.

have reimbursed himself the money which he had expended on behalf of the deceased, and also the expense of the application to the court, to invest the balance in his own name in government securities, and to keep it so invested until a general representation should be effected to the deceased (s). The administrator filed an inventory, and gave justifying security.

In December, 1822, in the goods of Sir *Theophilus John Metcalfe*, administration was granted to a nominee of the guardian of the deceased's only child, "limited for the purpose only of collecting and getting in all outstanding monies, debts, or accounts, receiving all dividends due or to accrue due upon any sum in the public funds of Great Britain, and all interest or dividends that might be declared due upon any other security or securities in Great Britain, and also to present, when due, any bill or bills of exchange, and to receive the amount thereof; and the money, when so collected and got in as aforesaid, to invest in the public funds of Great Britain, or other good and sufficient security or securities in England bearing interest, until the original will, or an authentic copy, should be brought into and left in the registry of the court, in case it should appear that the deceased made any will, or until it shall be ascertained that the deceased died intestate" (t).

The nature of the administration explains the

(s) In the goods of *Don Miguel Gudolle*, Trinity Term, 1835.

(t) *Howell v. Metcalfe and Sanders*, 2 Add. 350.

facts upon which it was granted. It will be seen that the form of the grant is *letters of administration*, and not merely letters *ad colligenda bona*.

Of a grant like this, it may be more than doubted that it is legal. As we have remarked before, the court cannot divide a succession, except in cases where the law has distinctly made a conflict of successions, *e. g.*, as in the case of wills made under a power, or those of petty officers and seamen in her majesty's service. Any attempt to make such a division in other cases only brings the court into collision with the 13 Edw. 1.

The court can make no legal grant of a deceased's *own* effects, without directing and empowering the administrator to pay all the deceased's debts. And no administrator can pay the latter, or any of them, without having a control over the whole of a deceased's estate (*t*).

This form of grant has arisen out of a confusion of ideas of what are true letters of administration, and mere letters *ad colligendum*, under which no action can be either brought by or against the grantee. But in the last-mentioned case the creditor had always a remedy, as he could at any time call in letters *ad colligendum*, and take a general administration himself.

The same want of legal principle may be traced in another instance, where the court

(*t*) Vide "Law Magazine and Law Review," vol. 4, p. 96.

grants letters of administration (with the will annexed) *de bonis non*, to a legatee, limited to the receipt or recovery of his legacy (*u*).

Limited administration under 73rd section of the new act.

In dispensing with the 21 Hen. 8, c. 5, the court is empowered to make a grant of administration of a part of the deceased's personal estate, if it shall think fit, under the circumstances provided for by the 73rd section (*v*).

Provisional limited grants under the new act.

By the 86th section of the new act, it is provided, that "all grants of probates and administrations made before the commencement of the act, which may be void or voidable, by reason only that the courts from which respectively the same were obtained, had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants."

A proviso in the same section excludes from the operation of the clause grants already revoked, or in a course of revocation.

And by the 88th section it is provided, that "where any probate or administration has been granted before the commencement of the act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant probate or administration only in respect of such personal estate not

(*u*) Vide *post*.

(*v*) See p. 153.

covered by any former probate or administration. And such grant may be limited accordingly."

By the first-mentioned clause, all grants of inferior courts, which would have been void by reason of the existence of *bona notabilia* in another jurisdiction, are legalized to the extent of the property within the jurisdiction of the court by which the grant was made.

By virtue of the other clause, the Court of Probate is made competent to grant probate or administration in respect of all personal estate "not covered by the former probate or administration," and the grant will be limited accordingly.

SECTION VI.

GRANTS, SAVE AND EXCEPT.

Probate of a will, or letters of administration with a will annexed, will be granted, save and except any particular fund, whenever the nature of the case and the law require such exception to be made. Grants, save and except.

If a testator appoint an executor for a special purpose, or a specific fund only, and appoint an executor for all other purposes, the latter may Probate, save and except.

take probate save and except that purpose or fund.

Administra-
tion (will)
save and ex-
cept.

Or, if there be no such other executor, the residuary legatee may take administration (with the will annexed), of all and singular the goods of the deceased, under the same exception.

Probate, save
and except.

If the will of a mariner, &c., in the Queen's service, be invalid to pass his pay and prize-money, but be otherwise valid, the executor of that will may take probate, save and except the deceased's wages, pay, and prize-money.

Administra-
tion (will)
save and ex-
cept.

And on the renunciation, or the failure of the executor, the residuary legatee under such a will may take administration (with the will annexed), under the same exceptions.

Mere admini-
stration,
save and ex-
cept.

So, where the nature of the case and the law require it, the court will grant mere administration, save and except.

To next of
kin of tes-
tator.

When a testator has made his will for a particular or limited purpose only, *e. g.*, the administration of a fund vested in himself as trustee,—the administration of an estate vested in himself as executor, or the administration of his own property in some particular district or country, and has died intestate as regards all other property of his own, or vested in him, his next of kin (without waiting for the executor to take the limited probate which he is entitled to under such circumstances), may take administration of all and singular the deceased's goods, save and except what the testator has himself excepted.

In like manner the husband of a testatrix, To husband of testatrix. who has made her will under a power, may take administration, save and except what she had a power to dispose of by her will, and has disposed of by it, before the executor proves the will.

So, also, may the next of kin of a testatrix, To next of kin of testatrix (feme coverte). who has made her will by virtue of a power, during coverture, and has died a widow without republishing it.

The grants of probate and administration, save and except, are usually made in the first instance, without the parties waiting for the limited grants being taken. When the latter have been taken in the first instance, it is more usual that the probate or administration be *cæterorum* : but there is no reason, though a limited grant has been made, that the following grant should not be save and except, instead of *cæterorum*.

SECTION VII.

GRANTS "*CÆTERORUM*."

The probate or administration following upon Grants cæterorum. a limited grant is *cæterorum* ; and, except that it follows, instead of preceding such a grant, it is, as we have intimated, made for

the same purposes, and under the same conditions, as the grant "save and except."

Probate
cæterorum.

If a testator has appointed an executor for a special purpose, or a specific fund, together with another executor for all other purposes and effects, and the first-mentioned executor has taken his limited probate, the other may take probate of the rest of the testator's goods.

Administra-
tion (will)
cæterorum.

If a limited grant has been previously made, (viz., on the renunciation of the executor,) the residuary legatee may at any time come in and take administration (with the will annexed), of the rest of the deceased's goods.

Administra-
tion cætero-
rum to hus-
band.

If the executor of a married woman's will has taken a limited probate, the husband or his representative may take administration of the rest of her goods.

To next of
kin.

And the same remark applies where a limited probate has been taken of a will made during coverture, but not republished during the widowhood of the testatrix. In this case, the next of kin take the administration of the rest of the goods of the testatrix.

If the deceased has made a will and appointed an executor for a special purpose, or for a specific fund or property only, and has died intestate in all other respects, his next of kin, after the executor has taken a limited probate of the will, are entitled to administration of the rest of the deceased's goods.

If a limited administration has been granted in the goods of any intestate, his next of kin are entitled to take administration of the rest of the deceased's goods.

But if they have renounced, preparatory to the limited grant being made, they must retract their renunciation before they can take administration. If they have been cited only, no retraction is required of them.

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CHAPTER IV.

GRANTS " DE BONIS NON."

*Grants de
bonis non.*

IF the executor or executors to whom probate has been granted have died, leaving a part of their testator's personal estate unadministered, the court may appoint a new representative, for the purpose of administering such part of the estate, if the executorship has not been legally transmitted in the manner which we have already described (a).

And the court will make a like exercise of its jurisdiction in cases where an administrator, with or without a will annexed, has died without having fully administered his deceased's estate.

In making such grants, the court is governed by the same rules which apply to original grants, and will grant administration, with or without a will annexed, of the deceased's unadministered goods to the same persons only, who have a right or interest sufficient to have entitled them to original grants, if they had applied for them, the executor of course being excepted.

(a) Page 44.

We have before shown that a probate granted of an executor's will by the same court as that in which he proved his own testator's will, *ipso facto* keeps up, as if by a chain, the personal representation of the latter; and that this rule applies to an indefinite succession of executors, however far they may be removed from the original testator. Upon the danger and hardship of this rule it is not for us to remark, nor shall we observe upon the absurdity of the laws presuming a privity where none can exist.

Administra-
tion (will)
de bonis non.

We have now only to show by what means, and under what conditions, this chain of executorship may be broken or interrupted.

The conditions under which the chain of executorship is broken in law may be thus enumerated:—

Chain of exe-
cutorship,
how broken.

1. When the immediate sole or surviving executor, after probate taken by him, dies intestate.

2. When the immediate surviving executor dies without having proved his testator's will.

3. When the remote sole or surviving executor, to whom an executorship has been transmitted *per catenam*, dies intestate.

4. When the remote executor or executors renounce the probate of their own testator's will.

5. When the remote executor or executors die without having proved their own testator's will.

6. When of two or more executors who have died after probate taken by them, it is impossible to show which of them survived the other or others (*b*).

To residuary legatee, &c.

In all these cases the court will grant administration, with the will annexed, to the residuary legatee (*c*); and to others, subject to the rules which govern original grants.

On retraction.

The court will also admit into this kind of administration all renunciants, with the exception of executors, who have previously waived their rights to the original grant, upon a retraction of their renunciation (*d*).

In this manner if a legatee or a creditor, having taken administration (will) on the renunciation of the residuary legatee, dies leaving

(*b*) *Richards v. All persons in general*, 4 Notes of Cases, App. viii.

(*c*) Formerly, when the testator had failed to dispose of the residue of his personal estate, and had appointed an executor who took no benefit under his will, such executor was held to be entitled to the residue not disposed of by the former, and consequently on his dying leaving goods unadministered, his representative was entitled to a grant of administration (will) *de bonis non*. But by 11 Geo. 4 & 1 Will. 4, c. 40, executors are to be deemed, by Courts of Equity, trustees of the undisposed-of residue of a testator's estate for the benefit of such persons who would be entitled under the Statutes of Distribution in case of an intestacy, unless it should appear that it was intended that such executor was to take the residue beneficially. If there should be no person who would be entitled under the Statutes of Distribution, then the act was not to take effect.

Grants therefore to the representative of a deceased *nuda* executor are now of rare occurrence.

(*d*) Page 116.

goods unadministered, the latter may retract, and take administration (will) *de bonis non*.

The court will grant administration (will) to a legatee or a creditor, or to the representatives of a deceased legatee or creditor, on the renunciation of the residuary legatee. The representative of a deceased legatee will swear that his deceased's legacy has not been paid; and in like manner, the representative of a deceased creditor will swear that the debt still remains due. To a legatee
or creditor.

If the former grant were made to a creditor or a legatee, his representatives, if his debt or legacy be still unpaid, or any other creditor or legatee may take administration (will) *de bonis non*, without any further renunciation on the part of the residuary legatees.

A creditor in equity is as much entitled to this grant as a creditor at law.

In the goods of Sir *H. V. Tempest* and Lady *Antrim*, (June, 1853,) administration (with the will annexed) *de bonis non*, of the executor and executor's executor of the obligor, was granted to the legal personal representative of the obligee, the before-mentioned executors having received and admitted assets, and paid the interest and part of the principal money of the bond.

In ordinary cases the grant of administration (with the will annexed) *de bonis non*, includes the testamentary papers of which probate was originally granted. But if a codicil be discovered at or about the time of administration Codicil
proved.

de bonis non being applied for, the grant will pass of the will already proved, and of the codicil lately found (e).

Administra-
tion *de bonis*
non.

When an administrator dies, leaving part of his deceased's goods unadministered, the grant *de bonis non* will go to persons who would have been equally entitled to the original administration.

This observation applies to next of kin, to persons entitled in distribution, and to all others having an interest in an intestate's personal estate.

To persons
having a deri-
vative in-
terest.

A person having a derivative interest may be admitted to take administration (with will annexed) *de bonis non*, or mere administration *de bonis non*, under the same conditions as he would be allowed to take an original grant.

In the goods of "*Joseph Hibbert Newman*," and "*Ann Louisa Newman*," spinster, the court decreed administration *de bonis non* to a brother of the deceased, who died a bachelor, and intestate, leaving a father, who administered, and died intestate. The son of the latter, and his administrator, (who had left England, and resided at Melbourne,) was cited to accept or refuse, &c. (f).

Administra-
tion *de bonis*
non of per-
sons in ser-
vicio.

In applying for letters of administration *de bonis non*, of persons dying in her majesty's navy, a further certificate must be produced

(e) *William Adamson*, July, 1827.

(f) 4th September, 1856. By Sir J. Dodson.

from the Navy Pay Office, should any wages, pay, or prize-money, be still due.

Letters of administration *de bonis non* are no Exception. longer required in the case of grants made to the solicitor of the Treasury for the time being, as her majesty's nominee, the original grants being made to that functionary and his successors in office for ever (g).

And it was provided by the 3rd section of the 15 Vict. c. 3, that "in every case where letters of administration of any personal estate or effects of any intestate or other person deceased, have been granted to the said *George Maule*, as the nominee, or for the use and benefit of any of her majesty's predecessors, or as the nominee of her majesty, or for the use and benefit of her majesty, and now remain unrevoked, such letters of administration shall not be deemed to have determined by his decease, but such administration, and the office of administrator under the grant, and all the estates, rights, duties, and liabilities, vested in the said *George Maule* as such administrator at the time of his decease, or which would have been vested in the said *George Maule* as such administrator, if living, shall, upon the passing of this act, devolve upon and become vested and continue in the solicitor for the affairs of the Treasury for the time being, with the like succession, and in like manner, as in case of the administrations which may be

granted to the solicitor for the affairs of the Treasury for the time being, in pursuance of this act," &c. &c.

Administra-
tion, with
substance or
copy of will
annexed, *de
bonis non*.

If an executor, who has taken probate of a copy or the substance of a will, or if the grantee of letters of administration, with such copy or substance annexed, dies, leaving part of the testator's estate unadministered, letters of administration, with the copy or substance of the will annexed, *de bonis non*, will be granted upon the general principles regulating all grants, if it be again shown by affidavit that the original will has not been found, or recovered, or transmitted, according as the case may be. But if the original will be forthcoming, the grant will assume another form (*vide post*).

For the use
and benefit
of lunatic.

If the person, who would otherwise have taken an administration (with or without a will) *de bonis non*, be a lunatic, or of unsound mind, administration *de bonis non* will be granted for his use and benefit to the order of persons to whom an original grant would have been made under the same circumstances. And the lunacy or unsoundness of the party for whose use the grant is made is evidenced in the same manner as in the case of an original grant.

In "*Southmead's*" case, the court granted administration *de bonis non* to the executors of one of the next of kin, for the use of the other next of kin, who was imbecile, passing over the next of kin of the latter, but required proof that

the grant so made would be for the advantage of the imbecile next of kin (*g*).

If an administrator *cæterorum* dies without fully administering the estate committed to him, a grant of the rest of the deceased's goods so left unadministered will be made to the same order of persons, who would have been competent to have taken an original grant.

Administra-
tion of the
rest of goods
unadminis-
tered.

And the same observation applies to the case of administration *save and except*, left unadministered by the original grantee.

Save and ex-
cept.

If on the death of an executor who has taken probate, or of an administrator who has taken administration, limited to a particular estate or fund, that estate or fund be left unadministered or untransferred, limited letters of administration (with or without will) of the unadministered goods of the deceased will be granted to parties having the same kind of interest which the court recognized in the original grant.

Limited ad-
ministration
(with or with-
out will) *de*
bonis non.

If an executor has proved his testator's will, and has administered the estate, with the exception of a legacy which has been set apart and remains invested in the original testator's name, the court, on the death of the executor and interruption of the chain, on the consent or citation of the residuary legatees, will grant administration (with the will annexed) *de bonis non* to the legatee, limited to his legacy (*h*).

Limited ad-
ministration
(will) *de bonis*
non to le-
gatee.

(*g*) Rev. *W. Southmead*, 3 Curt. 29.

(*h*) *M. Steadman*, 2 Hagg. E. R. 59; *Sus. Biou*, 3 Curt. 741.

But these cases are exceptional, and very unusual in practice, the court, as a general rule, never granting limited administration to any person entitled to a general grant.

In law, also, it may be considered that a serious objection applies to such a form of grant.

Limited administration
de bonis non
of a trustee's
effects.

When the executors of a trustee, who had invested a trust fund in his own name, have died, breaking the chain, and the fund still remains as it was originally invested, the *cestui que trust* of that fund, or his nominee, may obtain administration of the unadministered goods of the deceased trustee, limited to the trust fund, upon the consent of the deceased's residuary legatees.

And a similar limited grant, under corresponding circumstances, will be made where the trustee has died intestate. The renunciation and consent of his next of kin, and the persons entitled in the distribution of his personal estate, will be required in this case before the limited administration *de bonis non* will be granted.

CHAPTER V.

SECOND, OR SUPPLEMENTAL GRANTS.

WHEN the original grant has been limited for any specified time, or until any specified event or contingency shall happen, a new grant must be made upon the efflux of the time and the accomplishment of the event or contingency referred to in the original probate or letters of administration, as well as upon the death of the grantee. Second, or supplemental grants.

But although this form of grant is only required where the deceased's estate has not been fully administered, it is distinguished (whether rightly or wrongly it is not easy to say) from grants *de bonis non*, as being a re-grant of the whole of the deceased's personal estate, just as it was sworn to and embraced in the original grant.

Accordingly the estate, on this second grant being applied for, must be sworn to under the same amount for which the original grant was taken, however much of the estate may actually have been disposed of by the first grantee (a).

(a) *Abbott v. Abbott*, 2 Phill. 578.

It is an absolute and permanent grant, following a temporary one (*b*).

And as the first administrator is, in some cases, at least, regarded by the court as the agent or representative of the succeeding one (*c*), the court cannot take a less security than for the whole of the deceased's estate, as it was when the original grant was made (*d*).

Probate to substituted executor.

If an executor being appointed for his life take probate, the latter *ceases* with his death, and the executor substituted in the will at the decease of the former takes a further probate.

If an executor be appointed for a shorter time than his life, or under any other limitation of time, and take probate, the grant ceases upon the expiration of the term or the fulfilment of the limitation, and the substituted executor, if there be such, takes probate.

Probate to executor on becoming sane.

When administration (with the will annexed) has been granted for the use and benefit of a lunatic executor, the grant ceases on the latter becoming sane, and he may take probate of the will.

But if the administrator dies, further administration (with the will annexed) is granted to some other person for the use and benefit of the executor, whose lunacy is again evidenced in the same manner as it was before. And if the lunatic

(*b*) *Abbott v. Abbott*, 2 Phill. 578.

(*c*) *Ibid.* p. 579.

(*d*) *Ibid.* p. 580.

dies, the grant made for his use and benefit ceases, and administration (with the will annexed) is granted to some person having sufficient interest.

Administration (with the will annexed), which has been granted to a guardian for the use of an executor during his minority, ceases when the executor attains his majority, and a probate is granted to the executor.

Probate to executor on attaining majority.

Such an administration (will) also ceases by reason of the guardian's death during the executor's minority, and in that case further letters of administration (with the will annexed) will be granted to a new guardian.

When administration (will) has been granted to the attorney of the executor, it ceases on the latter duly applying for and obtaining probate of the will.

To executor after grant made to attorney.

If the attorney be living, he is required to make an affidavit that there is no suit pending in any court of law or equity between him and any other person or persons touching the estate of the deceased, or in relation thereto.

The grant also ceases by the death of the attorney. If the executor, or any other constituent, die in the lifetime of the attorney-administrator, and before the estate has been fully administered by the latter, the grant, of course, determines, but the letters of administration which succeed it are in the form *de bonis non*.

Probate of
original will.

When probate has been granted of the substance of a will, limited until the original will or an authentic copy thereof shall be brought into the registry, the grant ceases on the original will, or an authentic copy thereof, being discovered and brought into the registry, and the executor will take probate of the original will, or the authentic copy, as the case may be.

Or more au-
thentic copy.

When probate has been granted of a copy of a will, limited until the original, or a more authentic copy, shall be brought in, the grant ceases on the original, or a more authentic copy being found or transmitted and brought in, and the executor takes probate of the original will, or the more authentic copy, as the case may be.

Probate of
will or admi-
nistration
after admi-
nistration
pendente lite.

Administration granted, *pendente lite*, ceases on sentence being given for or against a will, and the executor will take probate of the will, or the next of kin will take administration, as the case may be.

Administra-
tion to next
of kin on
attaining ma-
jority.

Administration, which has been granted to a guardian for the use of one or more next of kin (minors), ceases on the majority of such sole next of kin, or of any one of many, and administration will be granted to the next of kin.

If the guardian dies before majority is attained by any one of the minors, the administration which was granted to him ceases, and fresh letters of administration must be taken by a new guardian.

If the sole minor, or all the minors (where there are several), die before majority, the grant made on their behalf ceases, and administration may be taken by whosoever is by law entitled to the grant.

When a guardian takes administration for the use and benefit of minors, and afterwards, in his representative character, takes administration of the estate of another person, both these administrations cease as soon as one of the minors attains his majority.

When administration has been granted to the committee or next of kin of a lunatic, the grant ceases by the recovery of the lunatic or the death of the administrator, and a fresh grant is made in the one case to the party himself, and in the other to a new committee, or some other next of kin (e).

Administration to lunatic on his recovery, &c.

In the latter case, evidence is again adduced as to the lunacy of the party for whose use the administration is to be taken.

If the lunatic dies, the administration granted for his use ceases by his death, and administration will be granted to whosoever is by law entitled to the grant.

Administration granted to the attorney of a next of kin ceases on the latter applying for and obtaining administration to be granted to him.

Administration to constituent in the lifetime or after the death of the attorney.

The same administration ceases by reason of the death of the attorney-administrator.

(e) *Thos. Newton Penny, 4 Notes of Cases, p. 660.*

Probate of
original will.

When probate has
stance of a will, limit
an authentic copy t
the registry, the
will, or an auth
covered and bre
executor will te
or the authentic

Or more au-
thentic copy.

When prob
a will, limit
authentic
ceases on
being fo
the exec
or the

Probate of
will or admi-
nistration
after admi-
nistration
pendente lite.

Adi
on se
and
or
th

Administra-
tion to next
of kin on
attaining ma-
jority.

CHAPTER VI.

ALTERATIONS IN GRANTS.

It may occasionally happen that the court, in making its grants, has erred in certain points, In regard to the deceased. *e. g.*, in spelling the christian names or surname of the deceased ; in describing the *status* of the deceased, if a female ; in setting forth the time of the deceased's death, and the amount of the personal estate.

In limited grants, also, there may have been a misdescription of the property which is to be administered, or there may have been a misrecital of the power under which a will has been made, or of a deed by which the trust has been created.

In all these cases the court will make the required amendments in the grants, on the necessary proof and identification being adduced.

Where the time of the deceased's death is altered, a further affidavit of property is required Time of deceased's death. from the executor or administrator.

In grants of administration, if the administrator find it necessary to increase the amount Amount of estate increased.

of the estate of the deceased, the provisions of the 55 Geo. 3, c. 184, s. 42, must be followed. By that section it is provided, "that in cases of letters of administration on which too little stamp duty shall have been paid at first, the commissioners of stamps shall not cause the same to be duly stamped in the manner aforesaid (*i. e.*, provided by the preceding section) until the administrator shall have given such security to the Ecclesiastical Court or ordinary by whom the letters of administration shall have been granted, as ought by law to have been given on the granting thereof, in case the full value of the estate and effects of the deceased had been then ascertained."

In obedience to this provision, the administrator is resworn by the court, *quâ* administrator, in the increased amount of the estate and effects of the deceased, and gives a further bond with two sureties.

After this has been done, an officer of the court certifies, or *notes* upon the letters of administration, that such further security has been given. This is done in compliance with a regulation prescribed by the commissioners of inland revenue, under the provisions of the 40th and 41st sections of the before-mentioned act, *viz.*, "that in cases of letters of administration, on which too little duty shall have been paid at first, there must be delivered with the affidavit a certificate from the proper officer of

" the Ecclesiastical Court where the letters of
" administration were granted, that the adminis-
" trator hath given further security for the due
" administration of the personal estate and effects
" of the deceased in consequence of the same
" having been since discovered to be of greater
" value than was first sworn to" (a).

When the increased amount of the estate is sworn to by an applicant for administration *de bonis non*, the certificate or notation is written upon the original grant.

An administrator, limited to attend and substantiate proceedings in Chancery, &c., who for this purpose will have sworn the deceased's estate under 50*l.*, may be afterwards resworn and give security in any increased amount (b).

Where the grant has been made for the use and benefit of others, a further inventory is given by the grantee on his reswearing the estate in a higher amount.

The same remark applies to all grants, where an inventory of the deceased's estate has been required to be filed *ex officio* by the standing rules of the court.

In cases where the alteration is not in the amount of the deceased's estate, the administration bond is sometimes re-executed, and sometimes a new bond is given.

(a) Shelford's "The Law relating to the Probate, Legacy and Succession Duties," p. 52.

(b) *Elizabeth Grant*, deceased, March and May, 1840.

A re-execution is allowed where the principal and sureties will attend in the registry for the purpose of re-execution. But a new bond is required where such personal attendance cannot be given, for it has been a rule, that a bond once executed shall not be delivered out of the registry for re-execution.

If a further codicil be found after probate of a will has been granted, a separate probate is granted of that codicil, and the first probate undergoes no alteration or amendment whatever. If, however, the appointment of the executors under the will is annulled or varied by the codicil, the probate must be brought in and revoked, and probate granted anew of the will and codicil; but should an unattested or unexecuted paper, incorporated by the testator in his will, have been omitted from probate, that probate may be amended by engrossing the former into it (c).

Further engrossment in probate.

In regard to executor or administrator.

These remarks refer more especially to the deceased; but the court is equally open to receive an explanation, plainly given, of an error *bonâ fide* committed in cases where an alteration is asked which more particularly applies to the executor or administrator himself.

An executor may inadvertently, in order to coincide with his nomination in the will, omit a christian name of his own, which has been

(c) Dr. Lushington in *Sheldon v. Sheldon*, 3 Notes of Cases, pp. 255, 256.

therein omitted, or he may use a surname, therein imposed upon him, without sufficient authority for its assumption. If he can explain this credibly and reasonably, the court will make the necessary alteration. And this will be done either in the case of an executor, who has taken probate, or of an executor to whom power has been reserved. For if the latter applies for a double probate, and it then appears that there was an omission in his christian name, or a mistake in his christian name or surname, the omission or mistake will be amended in the original probate before the double probate will be issued.

All the facts stated in explanation of the omission, or mistake, are proved by affidavit.

But the case is different where the explanation shows fraud or *mala fides* on the part of the grantee. The court then is not so facile.

Where an executrix, being a married woman, took probate as a spinster, the court would not allow her name and description to be altered without her husband's consent (*d*).

(*d*) Rev. Wm. Hale, 5 Notes of Cases, pp. 514, 515.

CHAPTER VII.

REVOCATIONS OF GRANTS.

Power of
court to re-
voke.

THE court, as having the fullest authority on the subject matter, is not necessarily or absolutely *functa officio*, even after a grant has been made. For the court possesses and exercises, when it becomes necessary, the power of revoking or annulling for a just cause, any grants which it has heretofore made. And in so doing it only resumes into its own hands the powers which it parted with on false or inaccurate suggestions.

Grounds of
revocation.
Directly
false sugges-
tions.

1. The court revokes a grant made to a person who has no interest. Such a person may have obtained the grant fraudulently, and *malâ fide*, in either of two ways, viz., by making a directly false suggestion, or by surreptitious and clandestine conduct, in concealing from the court something material to the case, which it should have known.

False sugges-
tions made
per incuriam.

2. It revokes grants for the same want of interest, where they have been obtained on a false suggestion made by the party in ignorance only, or *per incuriam*.

Supervening

3. It revokes grants which have been law-

fully made, but have subsequently become in-
operative and useless through circumstances, or
which, if allowed to subsist, would prevent the
administration of the estate.

It revokes any of these three classes of grants
at the petition of the grantee himself, and with
his consent and co-operation, or without his con-
sent, or on pain of his contumacy.

The more usual cases which come under these
general heads may be stated as follows :—

An executor of a forged or a revoked will
obtains probate of it.

Cases for re-
vocation
under first
head.

An executor obtains probate of a will, whilst
a suit is depending touching its validity in
another court, viz., that of the deceased's domi-
cile (a).

An executor obtains probate of a will made by
a *feme covert*, without power for that purpose,
on the suggestion that she was a widow at the
time of making it (b), or had power to do so.

An executor, being a minor, obtains probate
of the will by which he is appointed, on the
tacit suggestion or understanding that he is of
full age (c).

An executor obtains probate of the will of a
living person (d).

(a) *Trimlestown v. Trimlestown*, 3 Hagg. E. R. 248.

(b) *Alicia Gill*, 1 Hagg. E. R. 341.

(c) Oughton, in note to Clarke's *Praxis*, says, "Quia ad-
ministrato non fuit plenæ ætatis."

(d) *Chas. Jas. Napier*, 1 Phill. 83.

Cases for re-
vocation
under first
head.

A woman claiming to be the relict of an intestate, but who has not been legally married, or is a counterfeit altogether, has obtained administration of the estate of the deceased as of her husband (*e*).

Persons claiming to be an intestate's next of kin, who are in reality illegitimate relatives only, or are mere impostors, or are not nearest of kin, there being others nearer, have obtained administration (*f*).

Administration taken of the estate of a living person.

Cases for re-
vocation
under second
head.

In the second division, which will necessarily include many of the cases described in the first, will also be comprehended cases such as the following:—

A will has been discovered after administration taken.

A later will has been discovered after probate taken of an earlier will.

Probate has been taken of a will without a codicil or codicils afterwards discovered, which revoke or add to the appointment of executors under the will.

Under this head, also, will rank the case where letters of administration (with a will annexed) have been issued upon the renunciation of an executor, who had previously intermeddled in the estate of the testator, and who has been

(*e*) *W. Moore*, 3 Notes of Cases, p. 601.

(*f*) *H. C. Bergman*, 2 Notes of Cases, p. 22.

afterwards compelled by the court to take probate (*f*).

The cases under the third head may be specified as follows :—

Cases for revocation under third head.

A *feme covert* having taken probate of a will, of which she is executrix, without the consent of her husband, he refuses to join in her acts (*g*).

A *feme* executrix has taken probate, but her husband having become a lunatic, is incapacitated from joining in her acts (*h*).

A *feme* executrix and her co-executor jointly prove a will, but the husband of the former, before the estate has been dealt with, leaves the country with the intention of never returning (*i*).

In revoking these probates, the court requires from the executrix an affidavit that she has not intermeddled in the testator's estate.

One of two executors proves a will, and becomes a lunatic. In the same case the other executor, after the lunacy of his co-executor, takes probate himself (*j*).

Where administration (with will annexed) has been granted to two or more residuary legatees, of whom one subsequently becomes a lunatic (*k*).

(*f*) Comyn's Digest, *sub voce* "Administration."

(*g*) *Joanna Wilkinson*, 3 Phill. 96.

(*h*) *Jenny Farmer*, July, 1827.

(*i*) *E. Dye*, 2 Robertson, 343.

(*j*) *J. Marshall*, 1 Curt. 297.

(*k*) *Rev. W. Phillips*, 2 Add. 336 ; 3 Curt. 429.

Cases for re-
vocation
under third
head.

In these two last-mentioned cases, fresh grants are made to the sane executor and administrator.

In the first case a power is reserved of making a grant of probate to the lunatic executor, whenever he shall become of sound mind and apply for the same.

Administration has been granted to a *feme covert*, whose husband has afterwards refused to join with her in the administration of the estate.

One of two or more administrators becomes incapable and of unsound mind (*l*).

In the latter case a fresh grant is made to the capable administrator.

A tenant for life of a certain fund, after taking administration thereto, assigned his interest therein to the remainderman (*m*). The court made a grant to the remainderman.

A creditor, after a grant of administration, with or without will, has paid himself his debt, and left the country (*n*).

A creditor having paid himself his debt, and there still being assets left, was desirous *bonâ fide* of retiring from the administration of the estate.

In this case the court, upon an affidavit from

(*l*) *M. Newton*, 3 Curt. 428; *Rev. W. Phillips*, 2 Add. 335. In the latter case, the committees of the person and estate of the lunatic administrator consented.

(*m*) *A. Ferrier*, 1 Hagg. E. R. 243.

(*n*) *Jenkins*, 3 Phill. 33.

the administrator, "that there were no actions or suits at law or in equity, touching or concerning the estate and effects of the deceased, and his administration thereof, depending between him and any other person" (o), revoked the grant theretofore made to the creditor, and made a new one to a residuary legatee, who retracted his former renunciation for the purpose.

Cases for revocation under third head.

It is said that the court can deal, at discretion, with grants made to creditors, for they are appointees of the court (p).

There are some other cases, which do not come under the three general heads before mentioned.

If administration (with a will only annexed) has been granted, and a codicil be afterwards found, a separate grant cannot be made of the latter, as in the case of a probate, but the administration (with the will annexed) must be revoked, and a new administration taken, with both the will and the codicil annexed.

Other cases for revocation.

It is stated in Sir S. Toller's "Law of Executors and Administrators," (book 1, chap. 3,) "that an administration may be repealed *quia improvide*, that is, where on a false suggestion, in respect to the time of the intestate's death, it issued before the expiration of a fortnight from that event."

(o) *Edward Hoare*, Trinity Term, 1833.

(p) *Menzies v. Pulbrook and Ker*, 2 Curt. 850.

Though it may be doubted that the court could revoke a grant obtained through the *incuria* of the registry, viz., in spite of a caveat duly entered and subsisting; yet it is clear, that so jealous is the court upon the subject of a grant made after a caveat entered, even though that caveat has expired, that in one case it stated that a grant obtained under such circumstances, without giving notice to the party who had entered it, was obtained, "to use a tender expression," irregularly.

Manner of
revocation,
&c.

The court never revokes except on the application of a person having an immediate right to the grant which is to take its place and be substituted for it, and such person must ask for it and be prepared to take it at the time of his application to have the other grant revoked.

The revocation of the first grant and the substitution of the new one are made at the same time. Accordingly, the court cannot revoke at the application of a creditor, whatever may be the merits of the case, because such creditor cannot demand a grant to be made to himself of immediate right (q).

Cancellation
of revoked
grant.

From a just reluctance to leave a revoked grant in the hands of its grantee, (probably an unscrupulous man,) the court requires it to be produced and delivered to the registrar at the time of its revocation, so that it may be afterwards cancelled in the registry.

(q) *Henry Christ. Bergman*, 2 Notes of Cases, p. 23.

The party whose grant is to be invalidated may attend personally, or he may authorize his legal agent to do the same.

If the proceeding is compulsory, *i. e.*, by citation of the party, he will bring it into the registry, or suffer the penalty of contempt.

If it is impracticable to compel it, owing to Exception. the party having left the country, the court will revoke it, though it cannot cancel it (*r*).

If the grant has been lost or mislaid, so that it cannot be found, the court will revoke it, on the fact being shown by affidavit.

As the court will only revoke a grant upon just cause, it will not revoke a grant made to a person on the suggestion of his being sole next of kin, though other next of kin are afterwards discovered, and though all parties interested consent that the grant shall be revoked and a new grant made to another party, one of such other next of kin (*s*). Cases where the court will not revoke.

It will not revoke a grant limited to attending proceedings in the Court of Chancery, in order to obtain which the next of kin had been cited. Nor will the court revoke such a grant on the application of the executor of a will, if he cannot state any inconvenience which would result from the continuance of the limited administration.

(*r*) *Scotter v. Field*, 6 Notes of Cases, p. 182, and *Richard Langley*, 2 Robertson, 408.

(*s*) *Mary Heslop*, 1 Robertson, 457.

The court is unwilling to disturb a grant without just cause; as where the executor could take a probate *cæterorum* (t).

The court will not revoke a grant, even such an one as we have just referred to, made on the refusal of a party cited and not appearing, but long afterwards coming in, unless there was misrepresentation in the first instance in obtaining it (u).

There are other cases, also, where the court does not revoke; but though it does not revoke the old grant, it makes a new grant of a subsidiary nature to it (x), dependent upon the circumstances which have called for it.

Cases where the first grant is not revoked but impounded.

In this latter order of cases the court, as a substitute for revocation, (with one exception,) orders the old grant to be *impounded* and kept in the registry until the condition of the new grant shall, if ever, be fulfilled.

Impounding dispensed with.

If a sole executor becomes a lunatic, or of unsound mind, the court will make a new grant to the committee of his estate (if there be one) for his use and benefit, until he shall become of sound mind.

So, also, if a sole administrator becomes of

(t) *Harris and Wiggins v. Milburn*, 2 Hagg. E. R. 62. But in the Rev. *James Curry*, deceased, 5 Notes of Cases, p. 54, under nearly similar circumstances, the court refused to grant a probate *cæterorum*.

(u) *Lopez v. Hartley*, 7 Notes of Cases, p. 32, Supp.

(x) *L. Crump*, 3 Phill. 499.

unsound mind, the court will make a similar grant to his committee.

In both these cases the old grant remains at large, and is not required to be impounded. ^{Impounding required.} But in the first case, (*i. e.*, of the executor,) if there be no committee, the court will make a new grant to the residuary legatee named in the will, of which the executor has taken probate, for the use and benefit of the executor until he shall become of sound mind.

Where administration was granted to the intestate's widow, who subsequently became of unsound mind, the court made a new grant to the intestate's son for the use and benefit of the administratrix, until she should become of sound mind (*y*).

Upon this authority it may be presumed, that in a case where the administrator, being one of the next of kin, has become of unsound mind, the court would make a new grant to another next of kin for his use, &c. And it may also be presumed, in a case where the administrator is the sole next of kin, the court would make the new grant upon the same principle to a person entitled in distribution to the intestate's estate.

In these last-mentioned cases the court, by an innovation in practice now of some years' standing, does not revoke the grant, but directs it to be impounded in the registry during the

(*y*) *Henry Binckes*, 1 Curt. 286.

grantee's incapacity to make a legal use of it, the intention being, that on his recovery it should be redelivered to him to make what use of it he can. But there seems to be an anomaly here, for the first grant being unrevoked remains valid, and the impounding of it can have no other effect than to prevent its coming into the hands of unauthorized or fraudulent persons. And in the instance which we have mentioned, where this impounding is dispensed with, a further anomaly is presented, viz., of two grants of the effects of the same deceased person circulating in the world at the same time.

We have spoken of these subsidiary grants as being made in the general form. But in a case judicially directed, the court, on a surviving executor becoming imbecile, granted to the residuary legatee for life administration, (with the will annexed,) limited to the receipts of the dividends and interest due and to grow due upon certain government securities which constituted the deceased's residuary estate, for the use and benefit of the executor until he should become of sound mind (z).

(z) *L. Crump*, 3 Phill. 497.

APPENDIX.

20 & 21 VICTORIA, c. 77.

*An Act to amend the Law relating to Probates
and Letters of Administration in England.*

[25th August, 1857.]

“WHEREAS it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in England should be exercised, in the name of her majesty, by one court:” be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows :

I. This act (except where otherwise specially provided) shall come into operation on such day, not sooner than the first day of January one thousand eight hundred and fifty-eight, as her majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed. Commence-
ment of act.

II. In the construction of this act, unless the context be inconsistent with the meaning hereby assigned— Interpreta-
tion of terms.

“Will” shall comprehend “testament,” and all other testamentary instruments of which probate may now be granted :

“Administration” shall comprehend all letters of administration of the effects of deceased

persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes :

“Matters and causes testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration :

“Common form business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the court of probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

Testamen-
tary juris-
diction of
ecclesias-
tical and
other courts
abolished.

III. The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial, and other courts and persons in England now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters absolutely cease ; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.

Testamen-
tary juris-
diction to be
exercised by
a court of
probate.

IV. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her majesty, and shall, except as hereinafter is men-

tioned, be exercised in the name of her majesty in a court to be called the court of probate, and to hold its ordinary sittings and to have its principal registry at such place or places in London or Middlesex as her majesty in council shall from time to time appoint.

V. There shall be one judge of her majesty's court of probate; and it shall be lawful for her majesty from time to time, by letters patent under the great seal of the united kingdom, to appoint a person, being or having been an advocate of ten years' standing, or a barrister-at-law of fifteen years' standing, to be such judge.

Power to her majesty to appoint a judge of the court of probate.

VI. The judge of the court of probate shall hold his office during good behaviour, provided that it shall be lawful for her majesty to remove any such judge from his office upon an address of both houses of parliament.

Judge's tenure of office.

VII. Every judge of the court of probate shall, before executing any of the duties of his office, take the following oath, which the lord chancellor or the master of the rolls for the time being is hereby respectively authorized and required to administer :

Judge before acting to take the following oath.

"I A. B. do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and power, execute the office of judge of the court of probate.

"So help me GOD."

VIII. The judge shall have rank and precedence with the puisne judges of her majesty's superior courts of common law at Westminster according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

Rank and precedence of judge, who shall appoint a secretary and usher.

IX. There shall be paid to the judge the net yearly salary of four thousand pounds, and to his secretary the net yearly salary of three hundred pounds, and to his usher the net yearly salary of one hundred and fifty pounds.

Salaries of judge, secretary and usher.

X. Upon the next vacancy in the office of judge of the high court of admiralty of England it shall be

Judge of court of probate to

be also judge
of the admiral-
ty court
on the next
vacancy.

lawful for her majesty, if she so think fit, to appoint the person then being judge of the court of probate to be also judge of the said court of admiralty, or in case the office of judge of the court of probate become vacant before the office of judge of the court of admiralty, the judge of the court of admiralty may, with his consent, be appointed to and hold also the office of judge of the court of probate, and after the union of the said two offices they shall be thenceforth held by the same person.

As to in-
crease of
salary upon
union of the
two offices.

XI. From and after the union under this act of the two offices of judge of the court of probate and judge of the court of admiralty in the same person, the said yearly salary of four thousand pounds payable under this act shall be increased to five thousand pounds, and the salary now payable to the judge of the court of admiralty shall cease.

Retiring
pensions of
judges.

XII. Her majesty, by letters patent under the great seal of the united kingdom, may grant unto any person executing the office of judge of her majesty's court of probate an annuity, not exceeding two thousand pounds, or if such person be also executing the office of judge of the said court of admiralty, not exceeding three thousand five hundred pounds, to commence immediately after the day when the person to whom such annuity shall be granted shall resign the said office or offices, and to continue during his natural life; provided that her majesty may, in and by such letters patent, limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under her majesty, so that such annuity, together with the salary and profits of such other office, shall together not exceed in the whole the said sum of two thousand pounds or three thousand five hundred pounds, as the case may be: provided also, that no annuity granted to any person having executed the office of judge under this act, except the present judge of the prerogative court, shall be valid unless such person shall have held

such office for the period of fifteen years, or have held such office and any of the offices of judge in any of the superior courts of law or equity or the high court of admiralty for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

XIII. There shall be established for each of the districts specified in schedule (A) to this act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the court of probate, hereinafter referred to as "the district registry."

District registries to be established as in schedule (A).

XIV. There shall be three registrars, two record keepers, and one sealer for the principal registry of the court of probate, and there shall be one district registrar for each district registry hereinafter referred to as the district registrar, and there shall be so many clerks and other officers for the court and the principal registry as the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit: provided, that if at any time it appear to her majesty in council that the duties of the registrars of the principal registry of the court of probate can be performed by two registrars, it shall be lawful for her majesty by order in council to direct that the number of registrars for such principal registry be reduced accordingly.

Appointment of officers of the court of probate.

XV. Charles Dyneley, esquire, John Iggulden, esquire, and William F. Gostling, esquire, the present deputy registrars of the prerogative court of Canterbury, shall, if willing to accept the office, be the first registrars of the principal registry of the court of probate; Joseph Todd and John Smith, the present record keepers of the said prerogative court, shall, if willing to accept the office, be the first record keepers at the said principal registry; and William John Berry, the present sealer of the said prerogative court, shall, if willing to accept the office, be the first sealer of the said principal

As to appointment of the first officers of the principal registry.

registry; and George Jarvis Foster, clerk of the papers in the said prerogative court, shall, if willing to accept the office, be the first clerk of papers at the said principal registry.

Clerks and officers of prerogative court to be transferred to like offices in court of probate.

XVI. The other clerks and officers now employed in the said prerogative court shall be transferred to such situations in the court of probate and the principal registry thereof as the lord chancellor may in that behalf direct, so that their duties may be such as, in the opinion of the said lord chancellor, may be as nearly as possible similar to those which they have heretofore discharged in the said prerogative court: provided always, that no such clerk or other officer shall be so transferred whom the said lord chancellor shall consider to be from age, infirmity, or other cause, incompetent to the discharge of his duties.

Existing diocesan registrars to be entitled to be appointed district registrars at the same places.

XVII. The registrar or deputy registrar (as the case may be) now executing in person the duties of registrar of a diocesan or other court exercising testamentary jurisdiction at any place at which a district registry is to be established under this act, or where there is more than one such registrar or deputy registrar so acting such one of them as the judge shall select, shall be appointed the first district registrar for such district, save where the judge shall consider such registrar or deputy registrar, or all such registrars or deputy registrars if more than one, to be from age, infirmity, or other cause incompetent to the discharge of the duties of district registrar; provided that where there is now more than one such registrar or deputy registrar competent to the discharge of the duties, the judge may appoint them or more than one of them to hold such office of district registrar jointly with benefit of survivorship.

As to appointment to offices.

Salaries of officers.

XVIII. The registrars, district registrars, and other officers of the court of probate, except as herein provided, shall be appointed by the judge. There shall be paid to the several officers mentioned in schedule (B) to this act the several salaries set opposite to their respective titles in the same schedule, and the said district registrars shall, for the

performance of their duties under this act, including the services of any clerks they may employ, be entitled to take in respect of the business in their respective district registries such fees as shall be fixed as hereinafter provided; and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this act such salaries or other remunerations as the judge, with the consent of the commissioners of her majesty's treasury, shall from time to time in each case direct.

XIX. The registrars and district registrars shall hold their offices during good behaviour, subject to be removed by order of the lord chancellor for some reasonable cause to be in such order expressed; and the other officers of the court may be removed by the judge, with the sanction of the lord chancellor.

Tenure of
office of
officers.

XX. No person shall be appointed a registrar or district registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, unless at the time of the passing of this act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articulated clerk or paid clerk to a proctor in Doctors Commons, or as officer or clerk in the office of the said prerogative court, or of the prerogative court of York, or of any diocesan court.

Qualification
of registrars
and district
registrars.

XXI. All registrars, district registrars, officers, and clerks of the court of probate shall execute their respective offices in person and not by deputy; and no registrar of the principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

Officers of
the court to
execute
their offices
in person.
Registrars,
&c., not to
act as proc-
tors, &c.

XXII. The judge shall cause to be made seals for the court of probate, that is to say, one seal to be used in its principal registry, and separate seals to be used in the several district registries, and may

Power to
judge to
cause seals
of the court
to be pro-
vided.

cause the same respectively from time to time to be broken, altered, and renewed at his discretion ; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof, respectively, purporting to be sealed with any seal of the court of probate, shall in all parts of the united kingdom be received in evidence without further proof thereof.

The court to have throughout all England the same powers as the prerogative court within the province of Canterbury.

XXIII. The court of probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the prerogative court of the archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said prerogative court ; and all duties which, by statute, or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said prerogative court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the court of probate : provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

Suits for legacies or distribution not to be entertained.

Power to examine witnesses.

XXIV. The court of probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories,

or receive their or any of their affidavits or solemn affirmations, as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly as may be, as that in which a writ of subpoena ad testificandum, or of subpoena duces tecum, is now issued by any of her majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds.

As to production of deeds, &c.

XXV. The court of probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the court under this act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the court under this act, as are by law vested in the high court of chancery for such purposes in relation to any suit or matter depending in such court.

Powers of the court to enforce orders.

XXVI. The court of probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such

Order to produce any instrument purporting to be testamentary.

paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the court.

Registrars,
&c. to have
power to
administer
oaths.

Power to
appoint, also,
commis-
sioners to
administer
oaths, &c.

XXVII. The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the rules and orders under this act; and the persons so appointed shall be styled "Commissioners of Her Majesty's Court of Probate:" provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that act; and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the court of probate, or before any registrar, district registrar, or commissioner of

the court, shall be liable to the penalties and consequences of wilful and corrupt perjury.

XXVIII. If any person forge the signature of any registrar, district registrar or commissioner for taking oaths, or forge or counterfeit any seal of the court of probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such registrar, district registrar, or commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

Penalty on forging or counterfeiting seals or signatures of officers.

XXIX. The practice of the court of probate shall, except where otherwise provided by this act, or by the rules or orders to be from time to time made under this act, be, so far as the circumstances of the case will admit, according to the present practice in the prerogative court.

Practice of the court.

XXX. And to the intent and end that the procedure and practice of the court may be of the most simple and expeditious character, it shall be lawful for the lord chancellor, at any time after the passing of this act, with the advice and assistance of the lord chief justice of the court of queen's bench, or any one of the judges of the superior courts of law to be by such chief justice named in that behalf, and of the judge of the said prerogative court, to make rules and orders, to take effect when this act shall come into operation, for regulating the procedure and practice of the court, and the duties of the registrars, district registrars, and other officers thereof, and for determining what shall be deemed contentious and what shall be deemed non-contentious business, and, subject to the express provisions of this act, for fixing and regulating the time and manner of appealing from the decisions of the said

Rules and orders to be made for regulating the procedure of the court.

court, and generally for carrying the provisions of this act into effect; and after the time when this act shall come into operation it shall be lawful for the judge of the court of probate from time to time, with the concurrence of the lord chancellor and the said lord chief justice, or any one of the judges of the superior courts of law to be by such chief justice named in this behalf, to repeal, amend, add to, or alter any such rules and orders as to him, with such concurrence as aforesaid, may seem fit.

Mode of
taking evi-
dence in
contentious
matters.

XXXI. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may
issue com-
missions or
give orders
for exami-
nation of
witnesses
abroad, or
who are
unable to
attend.

XXXII. Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the acts of the thirteenth year of king George the

third, chapter sixty-three, and of the first year of king William the fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said acts, and of any other acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said court of probate and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

XXXIII. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the court of probate.

Rules of evidence in common law courts to be observed.

XXXIV. It shall be lawful for the judge of the court of probate to sit, with the assistance of any judge or judges of any of the superior courts of law at Westminster, who, upon the request of the judge of the court of probate, may find it convenient to attend for that purpose.

Common law judges may sit, on request of judge of court.

XXXV. It shall be lawful for the court of probate to cause any question of fact arising in any suit or proceeding under this act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the court of chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the court of probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.

cause such question to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

Powers of
the court
for the trial
of questions
by a jury.

XXXVI. When the court shall order a question of fact to be tried before itself by a jury, the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court may seem requisite ; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts ; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said superior courts ; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause ; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the court of probate shall have the same jurisdiction, powers, and authority in all respects as belong to any superior court of common law, or to any judge thereof, or to the high court of chancery, or any judge thereof, for the like purposes.

Question to
be stated,
and jury
sworn to try
it.

XXXVII. When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence ; and upon every such trial the court of probate shall have the same powers, jurisdiction, and

Court, on
trial, to have
the same

authority as belong to any judge of any of the said superior courts sitting at nisi prius.

authority as
a judge at
nisi prius.

XXXVIII. Where the court of probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the court of chancery.

Court may
direct where
issues shall
be tried.

XXXIX. Any person considering himself aggrieved by any final or interlocutory decree or order of the court of probate may appeal therefrom to the house of lords: provided always, that no appeal from any interlocutory order of the court of probate shall be made without leave of the court of probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

Appeal to
the house
of lords.

XL. All persons who at the time of the passing of this act have been admitted advocates in any of the ecclesiastical courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the court of probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the judicial committee of the privy council, unless and until her majesty shall otherwise order.

Advocates
admitted to
practise.

Barristers
may practise
in conten-
tious causes.

XLI. All persons who at the time of the passing of this act have been admitted as advocates as aforesaid shall be entitled to practise as counsel in any of her majesty's courts of law or equity in England, with the same eligibility to appointments, under acts of parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with the same

Advocates
admitted to
practise as
barristers.

rank and precedence which they now have before the said judicial committee, unless and until her majesty shall otherwise order.

Proctors
admitted to
practise.

XLII. Every person who at the time of the passing of this act is actually admitted and practising as a proctor in the courts in Doctors Commons, or in the prerogative court of York, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney or proctor, may, upon his application, at any time within one year after the passing of this act, be admitted a proctor of the court of probate, without payment of any fee or stamp duty.

Admission of
registrars
and proctors
as solicitors.

XLIII. Every person who at the time of the commencement of this act is acting as registrar or deputy registrar of any ecclesiastical court, or is actually admitted and practising as a proctor in the courts in Doctors Commons, or in any ecclesiastical court in England or Wales, may, within one year after the passing of this act, be admitted, without the payment of any stamp duty, fee, charge or gratuity whatsoever, as a solicitor of the high court of chancery upon the production of his appointment or admission as such registrar, deputy registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this act, and upon signing the roll of solicitors of the high court of chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such court, and to be afterwards in like manner admitted and enrolled as an attorney of her majesty's superior courts.

Admission of
articled
clerks to
proctors as
solicitors.

XLIV. Every person who at the time of the commencement of this act has served or is actually serving as an articled clerk to a proctor entitled to take such articled clerk, and who has not been admitted as a proctor, shall be entitled to be admitted as a solicitor of the high court of chancery, in the same manner, and subject to the same rules and regulations, and upon the same conditions as if he had

before the commencement of this act been articled to a solicitor or to an attorney-at-law; and such admission shall entitle such articled clerk so admitted as a solicitor to be afterwards in like manner admitted and enrolled as an attorney of her majesty's superior courts: provided, that if any such proctor to whom any such clerk is now articled shall retire from practice after the passing of this act, he shall and is hereby required to transfer such articled clerk to some other proctor, or to a solicitor, or to an attorney-at-law, for the unexpired term of his articles of clerkship; provided that the court shall at any time have the same power to transfer such clerk, during the unexpired term of his articles of clerkship, to any other proctor, or to a solicitor, or to an attorney-at-law, as the judge of the prerogative court now has in respect to clerks articled to proctors practising in the court of arches.

XLV. All solicitors and attorneys-at-law may practise in the court of probate, and the laws and statutes now in force concerning solicitors and attorneys shall extend to solicitors and attorneys practising in the said court; and the commissioners for taking oaths in the high court of chancery shall be commissioners for taking oaths in the court of probate.

XLVI. Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the court of probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.

XLVII. Such affidavit shall be conclusive for the

Practition-
ers.

Probates and
administra-
tion may be
granted in
common
form by
district
registrars,
if it shall
appear by
affidavit
that the
testator, &c.
had a fixed
place of
abode.

Affidavit

to be conclusive for authorizing grant of probate.

purpose of authorizing the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

District registrars not to make grants where there is contention, &c.

XLVIII. The district registrar shall not grant probate or administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

As to transmission of notice of application for grants of probate, &c. to district registrar.

XLIX. Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by rules or orders under this act; and no probate or administration shall be granted in pursuance of such application until such district registrar shall have received a certificate, under the hand of one of the registrars of the principal registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said registrar of the principal registry shall forward as soon as may be to the district registrar; all such notices in respect of applications in the district

registries shall be filed and kept in the principal registry, and the registrars of the principal registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other district registries, and the applications which may have been made for grants of probate or administration at the principal registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one registry, and shall communicate with the district registrars as occasion may require in relation to such applications.

L. In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the court of probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the court of probate through its principal registry, or, if the case be within its jurisdiction, to a county court.

L1. On the first Thursday of every month, or oftener if required by any rules or orders to be made in that behalf, every district registrar shall transmit to the registrars of the principal registry a list, in such form and containing such particulars as may be from time to time required by the court of probate, or by any rules or orders under this act, of the grants of probate and administration made by such

District registrar in case of doubt as to grant to take the directions of the judge.

District registrars to transmit lists of probates and administrations, and copies of wills.

district registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the district registrar to be a correct copy, of every will to which any such probate or administration relates.

District registrars to preserve original wills.

LII. Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the public registry of the district, subject to such regulations as the judge of the court of probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

As to caveats.

LIII. Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry, and (subject to any rules or orders under this act) the practice and procedure under such caveats in the court of probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the prerogative court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

Where personalty is under £200, and real property is under £300, county court to have jurisdiction.

LIV. Where it shall appear by affidavit of the person or some or one of the persons applying for probate or letters of administration that the testator or intestate had at the time of his death his fixed place of abode in one of the districts specified in schedule (A) to this act, and that the personal estate in respect of which such probate or letters of administration should be granted under this act, exclusive of what the deceased shall have been pos-

seised of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, is under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seised or entitled beneficially at the time of his death was under the value of three hundred pounds, the judge of the county court having jurisdiction in the place in which it shall be sworn that the deceased had at the time of his death his fixed place of abode shall have the contentious jurisdiction and authority of the court of probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

LV. On a decree being made by a judge of a county court for the grant or revocation of a probate or administration in any such cause, the registrar of the county court shall transmit to the district registrar of the district in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the county court of such decree having been made, and thereupon on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

Registrar of
county
court to
transmit
certificate of
decree for
grant or
revocation
of probate.

LVI. The judge of any county court before whom any disputed question shall be raised relating to matters and causes testamentary under this act shall, subject to the rules and orders under this act, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein,

The judge of
the county
court to de-
cide causes
and enforce
judgments
as in other
cases.

and to enforce orders in relation thereto, as if the same had been an ordinary action in the county court.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

LVII. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a county court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a county court before whom any matter is pending under this act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the court of probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

As to appeals from county court.

LVIII. Any party who shall be dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this

act, may appeal from the same to the court of probate, in such manner and subject to such regulations as may be provided by the rules and orders to be made under this act, and the decision of the court of probate on such appeal shall be final.

LIX. It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any county court, but in every case such application may be made through the principal registry of the court of probate wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided, that where in any contentious matter arising out of any such application it is shown to the court of probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the court of probate may send the cause to such county court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

Not obligatory to apply for probate, &c. to district registries or county court, but may in every case be made to court of probate.

LX. For regulating the procedure and practice of the county courts, and the judges, registrars, and officers thereof, in relation to their jurisdiction and proceedings under this act, rules and orders may be from time to time framed, amended, and certified by the county court judges appointed for the time being to frame rules and orders for regulating the practice of the county courts under the act of the session holden in the nineteenth and twentieth years of her majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the lord chancellor, as in the said act is provided in relation to other rules and orders regulating the practice of the same courts; and for establishing rules and orders to be in force when this act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this act.

Rules and orders for regulating the procedure of county courts under the act to be made by the judges now having authority for the like purpose.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

LXI. Where proceedings are taken under this act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending interest in the real estate affected by the will shall, subject to the provisions of this act, and to the rules and orders under this act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.

LXII. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of her majesty's court of probate, shall in all courts, and in all suits and proceedings affecting real estate, of whatever tenure, (save proceedings by way of appeal under this act, or for the revocation of such probate or administration,) be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real

estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

LXIII. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate provided that the probate, decree, or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the court of probate; and

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

As to costs
of proof of
will.

LXV. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

Place of
deposit of
original
wills.

LXVI. There shall be one place of deposit under the control of the court of probate, at such place in London or Middlesex as her majesty may by order in council direct, in which all the original wills brought into the court or of which probate or administration with the will annexed is granted under this act in the principal registry thereof, and copies of all wills the originals whereof are to be preserved in the district registries, and such other documents as the court may direct, shall be deposited and preserved, and may be inspected under the control of the court and subject to the rules and orders under this act.

Judge to
cause calen-
dars to be
made from
time to
time in the
principal
registry, and
to be printed.

LXVII. The judge shall cause to be made from time to time in the principal registry of the court of probate calendars of the grants of probate and administration in the principal registry, and in the several district registries of the court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made,

the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects : and the calendars to be so made shall be printed as the same are from time to time completed.

LXVIII. The registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the district registries, and to the office of her majesty's prerogative in Dublin, the office of the commissary of the county of Midlothian in Edinburgh, and such other offices, if any, as the court of probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

Registrar to transmit printed copies to certain offices.

LXIX. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this act.

Official copy of whole or part of will may be obtained.

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the court of probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

Administration pendente lite.

LXXI. It shall be lawful for the court of probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate

Receiver of real estate pendente lite.

of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

Remuneration to administrators pendente lite and receivers.

LXXII. The court of probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

Power as to appointment of administrator.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct, and every such administration may be limited as the court shall think fit.

38 G. 3, c. 87, extended to administrators.

LXXIV. The provisions of an act passed in the thirty-eighth year of his late majesty king George the third, chapter eighty-seven, shall apply (in like

manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her majesty's courts of law and equity.

LXXV. After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

After grant of administration no person to have power to sue as an executor.

LXXVI. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such court may direct.

Revocation of temporary grants not to prejudice actions or suits.

LXXVII. Where any probate or administration is revoked under this act, all payments *bond fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

Payments under revoked probates or administration to be valid.

LXXVIII. All persons and corporations making or permitting to be made any payment or transfer *bond fide*, upon any probate or letters of administra-

Persons, &c. making payment upon probates

granted for
estate of
deceased
person to be
indemnified.

tion granted in respect of the estate of any deceased person under the authority of this act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

Rights of an
executor
renouncing
probate to
cease as if he
had not been
named in the
will.

LXXIX. Where any person, after the commencement of this act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

Sureties to
administra-
tion bonds.

LXXX. So much of an act passed in the twenty-first year of king Henry the eighth, chapter five, and of an act passed in the twenty-second and twenty-third years of king Charles the second, chapter ten, and of an act passed in the first year of king James the second, chapter seventeen, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.

Persons to
whom grant
of administra-
tions shall
be committed
shall give
bond.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the judge of the court of probate to enure for the benefit of the judge for the time being, and, if the court of probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct: provided that it shall not be necessary for the solicitor for the affairs of the treasury or the solicitor of the duchy of Lancaster applying for or obtaining administration to the use or benefit of her majesty to give any such bond as aforesaid.

Penalty on
bond.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and

effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or district registrar shall think reasonable.

LXXXIII. The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

Power of
court to
assign bond.

LXXXIV. All suits, whether original or by way of appeal, which at the commencement of this act shall be pending in any court in England respecting any grant of probate or administration, shall be transferred, with all the proceedings therein, to the court of probate, there to be dealt with and decided according to the rules and practice of the said court, except so far as such court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the court in which the same shall have been pending, to which end the court of probate shall, for the purposes of such suits, have all the jurisdiction, power, and authority possessed by the court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before her majesty in council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this act had not passed;

Pending
suits trans-
ferred to
court of
probate.

Not to apply
to appeals
pending
before her
majesty in
council.

and every person who if this act had not passed might have appealed to her majesty in council against any proceeding, decree, or sentence of any court respecting the grant of any probate or administration, may, notwithstanding this act, appeal to her majesty in council against such proceeding, decree, or sentence : provided also, that her majesty in council may remit to the court of probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before her majesty in council upon appeal as aforesaid, with such directions as the justice of the case may require.

Power to

whose jurisdiction is determined to deliver written judgments.

LXXXV. Provided, that if at the commencement of this act any cause which would be transferred to the court of probate under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this act, and shall be standing for judgment, such judge may, at any time within six weeks after the commencement of this act, give in to one of the registrars of the court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the court of probate on the day on which the same shall so be delivered to the registrar, and shall be subject to appeal under this act.

Void and voidable probates and administrations.

LXXXVI. All grants of probates and administrations made before the commencement of this act, which may be void or voidable by reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants : provided, that any such grants of probate or administration shall not be made valid by this act when the same shall before the commencement of this act have been revoked or determined by any court of com-

petent jurisdiction to have been void; nor shall this act prejudice or affect any proceedings pending at the time of the passing of this act in which the validity of any such probate or administration shall be in question: if the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

LXXXVII. Legal grants of probate and administration made before the commencement of this act, and grants of probate and administration made legal by this act, shall have the same force and effect as if they had been granted under this act, but in every such case there shall be due and payable to her majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the court of chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the court of chancery, at the discretion of the court.

Probates and administrations granted before this act comes into operation.

LXXXVIII. Provided that where any probate or administration has been granted before the commencement of this act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the court of probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

Probate or administration may be granted of personal estate not affected by the former grants.

Judges of
present ec-
clesiastical
courts and
others to
transmit all
wills, &c. to
the registry.

LXXXIX. The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the court of probate, from a registrar, and at the time and in the manner mentioned in such requisition, transmit to the court of probate, or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry, as the case may require, so as to be easy of reference, under the control and direction of the court.

Penalty for
default.

XC. No judge, registrar, or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents, or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this act, and every judge, registrar, or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of her majesty's superior courts, by the registrars.

As to depo-
sitories for
safe custody
of the wills
of living
persons.

XCI. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the court of probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct.

XCII. Nothing in this act contained shall affect the stamp duties now by law payable upon probates and administrations : and all the clauses, provisions, rules, regulations, and directions contained in any act of parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this act, as if such duties had been granted by this act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted.

This act not to affect the stamp duties on probates and administrations.

XCIII. The registrars of the court of probate shall, within such period as the judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the commissioners of inland revenue, or their proper officer, the following documents respectively ; that is to say, in the case of a probate or administration with the will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

The registrars to deliver copies of wills, &c. to the commissioners of inland revenue.

XCIV. Whereas by an act passed in the fifty-third year of king George the third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned ; and it is also therein further enacted, that

Sections 8 & 9 of 53 G. 3, c. 127 repealed in part as to the court of probate.

if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: be it enacted, nothing in the said act contained shall prevent any proctor of the court of probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

Fees to be taken by officers of court and by officers of county courts.

XCV. The lord chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this act, shall, as soon as conveniently may be after the passing of this act, fix a table or tables of fees to be taken by the officers of the court of probate, and the proctors, solicitors, and attorneys practising therein, including the district registrars, and the proctors, solicitors, and attorneys practising in district registries, and of fees to be taken by the officers of the county courts in respect of business under this act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills, and other documents in the custody or under the control of the court of probate, and the judge of the court of probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this act shall come into operation, to add to, reduce, alter, or amend such table or tables of fees, as he may see fit: provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the commissioners of her majesty's treasury; and every such table of

fees, and every addition, reduction, alteration, or amendment to, in, or of the same, shall be published in the *London Gazette*; and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers, and proctors, solicitors, and attornies.

XCVI. The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the court of probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the registrars of the said court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this act, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

Taxation of costs.

XCVII. None of the fees payable to the officers of the court of probate, or of any county court, in respect of business under this act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attornies, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

Fees not to be paid in money, but by stamps.

XCVIII. The fees to be collected by means of stamps under the provisions of this act shall be deemed "stamp duties," and shall be placed under the management of the commissioners of inland revenue, to be collected and paid into the exchequer under the same laws and regulations as those made in respect of the other duties of "stamps" and the provisions in the several acts for the time being in force relating to stamps under the care or manage-

Provisions of acts relating to stamps to be applicable to stamps for collecting fees.

ment of the commissioners of inland revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March shall be laid before both houses of parliament within one month after the termination of such year of accounts, or, if parliament be not then sitting, within one month after the commencement of the next session of parliament.

No document to be received or used unless stamped.

XCIX. No document which under this act, and any table of fees for the time being in force under this act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the court of probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto: provided that if any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the judge of the court of probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be

as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

C. If any officer of the court of probate, or any other person employed under this act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect, or omission whereby any fee or money which ought to be collected by means of a stamp under this act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the judge of the court of probate shall think fit so to order.

Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

CI. The salary of the judge of the court of probate, and any retiring annuity granted to a judge of the court of probate under this act, and all compensations payable under this act, shall be charged on and payable out of the consolidated fund of the united kingdom.

Salary of judge and compensations to be charged on consolidated fund.

CII. It shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for the purpose, to cause to be paid all salaries payable to the registrars, clerks, and other officers under this act, and all necessary expenses of the court of probate and its registries, and other expenses which may be incurred in carrying the provisions of this act into effect (except such salary, retiring annuity, and compensations as are hereinbefore charged on the said consolidated fund).

Salaries and expenses not charged on the consolidated fund to be paid out of monies to be provided by parliament.

CIII. It shall be lawful for the commissioners of the treasury to grant to any archdeacons, judges, deputy judges, registrars, deputy registrars, and other persons holding office in the courts now exercising jurisdiction in matters and causes testamentary who may sustain any loss of emoluments by reason of the passing of this act, and who are

Compensation to registrars, &c. of existing courts.

not transferred or appointed by or under this act to offices of equal value in the court of probate, such compensation as, having regard to the tenure of their respective offices and appointments, and to the provisions of the act of the session holden in the sixth and seventh years of king William the fourth, chapter seventy-seven, section twenty-five, and of the act of the session holden in the tenth and eleventh years of her majesty, chapter ninety-eight, section nine, and the several subsequent acts continuing the provisions of the said acts respectively, the said commissioners deem just and proper to be awarded : provided that where persons, whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said commissioners from granting to such persons such compensation as the said commissioners would deem just and proper to be awarded on the abolition or reduction of the emoluments of like offices, if held at the pleasure of the crown ; and it shall be lawful for the said commissioners to grant to all managing and other clerks who have been continuously employed in the offices of registrars of the said courts for fifteen years and upwards immediately before the passing of this act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said commissioners may deem just and proper : provided always, that if any person to whom any yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded ; and if the amount of such last-mentioned emoluments be greater than

the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

CIV. Any person to whom compensation is awarded under this act in respect of the loss of emoluments of any office, and who at the passing of this act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this act.

Persons receiving compensation to continue to discharge the remaining duties of their offices.

CV. Whereas the fees or emoluments of the persons now practising as proctors in the courts now exercising jurisdiction in matters and causes testamentary may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such proctors in such courts: be it enacted, that the commissioners of her majesty's treasury, by examination on oath or otherwise, which oath they are hereby authorized to administer, may inquire into and may, by the production of such evidence as they shall think fit to require, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors in matters and causes testamentary, on an average of five years immediately preceding the commencement of this act, or of such proportion of five years as shall have elapsed since each and every such proctor was admitted to practise in such courts, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life of such amount as shall be equal in value to one half of the net profits derived by such proctor in respect of matters and causes testamentary upon the said average of five years immediately preceding the commencement of

Compensation to proctors.

this act, or of such proportion of the said five years as shall have elapsed since the admission of each and every such proctor to practise in the courts now exercising jurisdiction in matters and causes testamentary.

Compensation to proctors in partnership.

CVI. And whereas divers proctors practising in the courts now exercising jurisdiction in matters and causes testamentary now are or may at the commencement of this act be associated together in partnership: be it therefore enacted, that in all such cases the commissioners of her majesty's treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation in respect thereof as hereinbefore provided to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

For the protection of the interests of Viscount Canterbury.

CVII. And whereas the most reverend Charles late archbishop of Canterbury, by virtue of the power given by an act of the ninth year of king George the fourth, "to authorize the lord archbishop of Canterbury for the time being to appoint a person or persons to the office of registrar of his prerogative, without a previous surrender of the existing grant or grants of the said office," did, by letters patent under his archiepiscopal seal, dated the twenty-first day of June one thousand eight hundred and twenty-eight, with the confirmation of the dean and chapter of the cathedral and metropolitan church of Christ, Canterbury, grant the said office of registrar of his prerogative to the right honourable Charles Manners Sutton, now viscount Canterbury, then Charles Manners Sutton, esquire, the eldest son and next heir male of the right honourable Charles Manners Sutton, late viscount Canterbury, for his life, subject and without prejudice to the estates and interests, rights and

privileges, of the reverend George Moore and Robert Moore (who then held the said office by virtue of such grant as therein mentioned), and the survivor of them : and whereas by an act passed in the session of parliament held in the second and third years of the reign of his late majesty king William the fourth, intituled an act for settling and securing annuities on the right honourable Charles Manners Sutton and on his next heir male, in consideration of the eminent services of the said right honourable Charles Manners Sutton, it was enacted, that an annuity of four thousand pounds should be payable out of the consolidated fund of the united kingdom of Great Britain and Ireland to the said right honourable Charles Manners Sutton late viscount Canterbury during his life, and that after the decease of the said Charles late viscount Canterbury one annuity of three thousand pounds be payable out of the said consolidated fund to the then heir male of the body of the said Charles late viscount Canterbury, during the natural life of such heir male ; and it was further enacted, that, in the event of the said Charles now viscount Canterbury having succeeded to and being in the possession of the said annuity of three thousand pounds, and afterwards becoming entitled to the full possession of the said office of registrar of the prerogative of the lord archbishop of Canterbury, and to the fees, perquisites, profits, and emoluments thereof (provided the same should exceed the annual sum of three thousand pounds), then and in either of the cases aforesaid the said annuity of three thousand pounds should cease and determine and be no longer payable to the said Charles now viscount Canterbury : provided nevertheless, that if the said fees, perquisites, profits, and emoluments of the said office of registrar should not produce the net annual sum of three thousand pounds to the said Charles now viscount Canterbury, then there should be issued and paid out of the said consolidated fund such a sum of money annually as, together with the

2 & 3 W. 4,
c. 109.

said fees, perquisites, profits, and emoluments, would make a clear annual income to the said Charles now viscount Canterbury of three thousand pounds: and whereas the said Charles now viscount Canterbury, upon the decease of the said Charles late viscount Canterbury, succeeded to and is now in possession of the annuity of three thousand pounds, but he is not yet in possession of the said office of registrar: there shall be awarded to the said Charles now viscount Canterbury, as a compensation for the fees, perquisites, profits, and emoluments of the said office of registrar of the prerogative of the lord archbishop of Canterbury, an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits, and emoluments of the said office during such period next preceding the time when this act shall come into operation as the commissioners of her majesty's treasury shall think proper; and such annuity shall commence from the time of this act coming into operation, if the said Charles viscount Canterbury shall then be in possession of the said office, and if not, then from the time at which the said Charles viscount Canterbury would have become entitled, but for the passing of this act, to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said Charles viscount Canterbury thenceforth during his life: provided that if the said annuity by way of compensation shall exceed the annual sum of three thousand pounds, then the said annuity of three thousand pounds payable under the last recited act to the said Charles viscount Canterbury shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said Charles viscount Canterbury; and in case the annuity awarded by way of compensation shall be less than the net annual sum of three thousand pounds, the provision contained in the said recited act passed in the session of parliament held in the second and third

years of his late majesty king William the fourth, for the payment unto the heir male of the body of the said Charles viscount Canterbury, out of the said consolidated fund, of such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make up a clear income to him of three thousand pounds, shall, from and after the commencement of the said annuity by way of compensation, be applicable to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits, and emoluments as aforesaid, a clear annual income of three thousand pounds to the said Charles now viscount Canterbury during his life.

CVIII. All the claim, title, and interest which at the time of the passing of this act the reverend Robert Moore, clerk, has or is entitled to in or in respect of the building at present used as the public registry of the prerogative court, shall at the time appointed for the commencement of this act vest in the registrars for the time being of the court, subject to the payment of such rents, and the performance and fulfilment of such contracts in respect thereof, as the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting.

The registry of prerogative court of Canterbury to vest in registrars of the court.

CIX. In case Sir John Dodson, the present judge of the prerogative court of Canterbury and dean of the court of arches, be not appointed the first judge of the court of probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as dean of the court of arches, the net yearly sum of two thousand pounds, to commence from the time appointed for the coming into operation of this act, and to be paid out of the fund and in manner herein provided for the payment of compensations.

Compensation to Sir John Dodson in case he be not appointed judge of the court of probate.

CX. There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as

Establishments in district registries.

the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge.

Fees payable
to district
registrars.

District
registrars
may be paid
by salaries
instead of
fees.

CXI. Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained by such district registrar to his own use; and every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the commissioners of her majesty's treasury, at any time after the commencement of this act, to order that the district registrars under this act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the exchequer at such times and under such regulations as the commissioners of her majesty's treasury shall direct, and shall be carried to and form part of the consolidated fund of the united kingdom, and the salaries of such district registrars and of their clerks shall be paid out of such monies as shall be provided by parliament for that purpose, and no such district registrar shall be

deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

CXII. It shall be lawful for the commissioners of the treasury to grant to every clerical surrogate or other clerical person who, at the time of the passing of this act, shall have been appointed surrogate in either of the provinces of Canterbury or York, such compensation for any loss the said surrogates or persons may sustain by the passing of this act as the said commissioners deem just and proper to be awarded; the said commissioners having regard in awarding such compensation to the circumstance of the said clerical surrogates not being able to follow any other professional employment in lieu of the said office of surrogate.

Compensation to clerical surrogates, &c.

CXIII. That every person to whom any compensation shall be granted under this act shall at all times when called upon be liable to fill any public office or situation in England under the crown for which his previous services in any office abolished by this act may render him eligible; and that if he shall decline when called upon so to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

Persons receiving compensation to be liable to be called upon to fill offices, &c.

CXIV. The commissioners of her majesty's treasury shall cause to be prepared in each year ending December thirty-one a return of all fees and monies levied in such year under the authority of this act; also a return of the annual salaries of the judge of the said court of probate, and of the registrars, deputy registrars, clerks, and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other monies; also a return of all superannuations, pensions, annuities, retiring allowances and com-

Publication of accounts.

pensions made payable under this act in each year, stating the gross amount and the amount in detail of such charges: provided always, that all such returns aforesaid shall be presented to both houses of parliament on or before the thirty-first day of March in each year, if parliament is then sitting, and if parliament is not sitting, then such returns shall be presented within one month of the first meeting of parliament after the thirty-first day of March in each year: provided also, that every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the commissioners of her majesty's treasury a faithful account in writing of all such fees received by him during such year.

Judge if a
privy coun-
cillor to be
a member
of judicial
committee.

College of
doctors of
law may let,
sell, &c.
their real
and per-
sonal estate,
and lay out
monies in
purchase of
other es-
tates, &c.

CXV. The judge of the court if a privy coun-
cillor shall be a member of the judicial committee
of the privy council.

CXVI. And whereas, with reference to the aboli-
tion of the jurisdiction hereby abolished and other-
wise, it is expedient to give, confirm, or extend
certain powers to or of "The College of Doctors of
Law exercent in the Ecclesiastical and Admiralty
Courts," incorporated under that style and title by
letters patent, dated the twenty-second day of June,
in the eighth year of his late majesty king George
the third: be it enacted, that it shall be lawful for
the said college from time to time hereafter to let,
sell, or exchange for other real or personal estate,
or both, all or any part of the real and personal
estate which shall for the time being belong to the
said college, either directly or through the medium
of any trustee or trustees, and to lay out the monies
to be received on any such sale or exchange, or
otherwise, belonging to the said college as aforesaid,
in the purchase of other real or personal estate, or
both, but so that the said college shall not at any
one time hold or enjoy real estate of a yearly value
exceeding one thousand pounds in the whole, and
to pay, apply, and dispose of the income of all the

real and personal estate which shall for the time being belong to the said college as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including, or not being or including, the said college, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said college shall think fit; and further, to alien and dispose of all or any part of such real and personal estate, and the proceeds of any sale thereof, either by way of donation, voluntary disposition, or otherwise, unto, between or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said college: provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal estate of the said college to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition shall be effectual without the previous consent thereto of a majority of the members of the said college present at any meeting of the college, and the receipt of the treasurer for the time being of the said college shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said college.

CXVII. It shall be lawful for the said college, at any time after a resolution to that effect shall have been come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to her majesty, her heirs or successors, at such time as in such resolution shall be determined, the charter of incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved, and shall cease to exist, for all purposes whatsoever, (except so far as its existence may be requisite for

College may
surrender
their charter,
and upon
such sur-
render, shall
be dissolved.

the saving of the rights of her majesty, her heirs and successors, and of all and every person and persons, body and bodies politic or corporate, whatsoever other than the said college); and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the president and fellows of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the president and three senior fellows of the said college, as joint tenants, their heirs, executors, or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.

Treasury to provide the buildings for registries, &c.

CXVIII. It shall be lawful for the commissioners of her majesty's treasury, out of such monies as may be provided and appropriated by parliament for that purpose, to cause to be purchased, erected, hired or otherwise provided such offices and buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addition to the building by this act vested in the said registrars, or after the determination of their interest in such building.

Rules and orders to be laid before parliament.

CXIX. All rules and orders to be made under this act concerning procedure and practice, and the table of fees to be fixed under this act, and all

alterations thereof to be from time to time made, shall be laid before both houses of parliament within one month after the making thereof if parliament be then sitting, or if parliament be not then sitting, within one month after the commencement of the then next session of parliament.

SCHEDULE (A).

Districts and Places of District Registries throughout England and Wales.

Districts.	Places of District Registries.
County of Northumberland (a)	Newcastle-on-Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmoreland.	Carlisle.
West Riding of the county of York ..	Wakefield.
North Riding ditto	York.
East Riding ditto (b) including the city of York and Ainsty	
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester.	Lancaster.
City of Manchester and hundred of Salford.	Manchester.
Hundred of West Derby in Lancashire ..	Liverpool.
County of Chester (c)	Chester.
Counties of Carnarvon and Anglesea ..	Bangor.
Counties of Flint, Denbigh, and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (d)	Nottingham.

(a) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(b) Including the town and county of Kingston-on-Hull.

(c) Including the city of Chester.

(d) Including the city of Nottingham.

SCHEDULE (A.)—*continued.*

Districts.	Places of District Registries.
Counties of Leicester and Rutland ..	Leicester.
County of Lincoln (<i>e</i>)	Lincoln.
Counties of Salop and Montgomery ..	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cam- bridge (<i>f</i>).	Peterborough.
County of Norfolk (<i>g</i>)	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex.	Ipswich.
Western division of the county of Suffolk	Bury St. Ed- munds.
County of Bedford and southern division of Northamptonshire (<i>h</i>).	Northampton.
County of Warwick (<i>i</i>)	Birmingham.
County of Stafford (<i>k</i>)	Lichfield.
Counties of Radnor, Brecknock, and Here- ford.	Hereford.
Counties of Cardigan, Carmarthen (<i>l</i>), and Pembroke (<i>m</i>), with the deaneries of East and West Gower in the county of Glamorgan.	Carmarthen.
Counties of Glamorgan (with the excep- tion of the deaneries of East and West Gower) and Monmouth.	Llandaff.
County of Worcester (<i>n</i>)	Worcester.
County of Gloucester (<i>o</i>), except the pre- sent Bristol County Court district.	Gloucester.
Bristol and Bath present County Court districts.	Bristol.
Counties of Oxford (<i>p</i>), Berks, Bucks ..	Oxford.

(*e*) Including the city of Lincoln.(*f*) Including the University of Cambridge.(*g*) Including the city of Norwich.(*h*) Including the town of Northampton.(*i*) Including the city of Coventry.(*k*) Including the city of Lichfield.(*l*) Including the town of Carmarthen.(*m*) Including the town of Haverfordwest.(*n*) Including the city of Worcester.(*o*) Including the city of Gloucester.(*p*) Including the University of Oxford.

SCHEDULE (A.)—continued.

Districts.	Places of District Registries.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district.	
Western division of the county of Somerset.	Taunton.
County of Devon (g)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (r)	Blandford.
County of Hants (s)	Winchester.
Eastern division of the county of Sussex (t).	Lewes.
Western division of the county of Sussex	Chichester.
East division of the county of Kent (u).	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the act of the second and third years of King William the Fourth, chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

- (g) Including the city of Exeter.
(r) Including the town of Poole.
(s) Including the town of Southampton and Isle of Wight.
(t) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
(u) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

SCHEDULE (B.)

	Annual Salary.
	£
The Three Registrars in London, each	. 1,500
The Record Keepers, each	. 600
The Sealer	. 300

RULES AND FEES.

RULES, ORDERS, AND INSTRUCTIONS

For the Registrars of the Principal Registry of her Majesty's Court of Probate, made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England," 20 & 21 Vict. c. 77, in respect of

NON-CONTENTIOUS BUSINESS.

NON-CONTENTIOUS business shall include all common form business as defined by the act, and the warning of caveats.

Non-Contentious Business.

1. Application for probate or letters of administration may be made at the principal registry in all cases.

2. For the present such applications are to be made through a proctor, solicitor, or attorney.

3. In no case should the registrars allow the probate or administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

Non-
Contentious
Business.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December, 1837.

4. If there be no attestation clause to a will presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, in reference to the execution of the will, were, in fact, complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.

5. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the registrars may require the parties to bring the matter before the Judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, in order to probate evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or if made afterwards, unless they have

been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

Non-Contentious Business.

9. Where interlineations or alterations appear in the will (unless duly executed or duly accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution, must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

10. In like manner, erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be readily ascertained, they must form part of the probate.

11. In every case of words having been erased which might have been of importance, an affidavit should be required.

12. If a will contain a reference to any deed, paper, memorandum or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum or other document should be required, with a view to ascertain whether it be entitled to probate; and if not produced its non-production should be accounted for.

13. No deed, paper, memorandum or other document can form part of a will or codicil unless it

Non-
Contentious
Business.

were in existence at the time when the will or codicil was executed.

14. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum or other document may have been annexed or attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum or other document must be required; and if not produced its non-production must be accounted for.

15. The above rules and orders respecting wills apply equally to codicils.

16. In case of probate of a married woman's will or of administration with the will of a married woman annexed made by virtue of a power, the power under which the will purports to have been made must be specified in the grant.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

17. It is not necessary that a will, codicil or testamentary paper dated before 1st January, 1838, should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil or testamentary disposition must be proved clearly by circumstances.

18. A will, codicil or testamentary paper, signed by the testator at the end of it, and attested by two disinterested witnesses (although there be no clause of attestation) is *prima facie* entitled to probate.

19. In cases where a will, codicil or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator

Non-
Contentious
Business.

subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will or codicil, or otherwise notified his intention that it should operate as such.

20. If the will, codicil or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie*

Non-
Contentious
Business.

be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise must be accounted for.

25. Every fact leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

26. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 36.

27. With respect to deeds, papers, memoranda or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders and instructions as to wills bearing date since the 31st December, 1837, will apply.

28. A will made before the 1st of January, 1838, is confirmed by a codicil, duly executed, bearing date on or after that day.

As to Letters of Administration.

29. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

30. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

Non-
Contentious
Business.

31. Whenever the court under sect. 73 appoints an administrator other than the person who, prior to the act, would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

32. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

33. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

34. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

35. Grants of administration will continue to be made as heretofore to the guardians of minors and infants, for the use and benefit of such minors and infants during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

General Rules and Orders for the Principal Registrars.

Non-Contentious Business.

36. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge.

37. No letters of administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the Judge.

38. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

39. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory the registrars are to require an affidavit.

40. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off.

41. The usual oath of administrators is, as well as that of executors and administrators, with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

42. Every will, or copy of a will, to which an executor or administrator with the will is sworn, should be marked by such executor or administrator, and by the person before whom he is sworn.

43. After motions have been made before the Judge in court, with regard to applications for pro-

bate and administration made at the district registries, the registrars are, unless the Judge shall otherwise direct, to return to the district registrars the original papers and documents, with the directions of the Judge thereon.

Non-Contentious Business.

44. Papers and other documents may be transmitted by the registrars of the principal registry to the district registrars through the post office. Such letters or packets are to be superscribed with the words, "On her Majesty's service," and may be registered, if thought necessary.

45. In the case of persons residing out of England, administrations, with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney duly attested.

46. The addition and true place of abode of every person making an affidavit is to be inserted therein.

47. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

48. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

49. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner or other person before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner or other person, before whom the affidavit was made.

50. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor

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or attorney, or before a clerk of his proctor, solicitor or attorney.

51. Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctors, solicitors or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

52. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

53. The registrars shall, immediately upon a caveat being lodged, send notice thereof to the registrars of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

54. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

55. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

56. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

57. Any person intending to oppose a grant of probate or letters of administration must appear, either personally, or by his proctor, solicitor or attorney, and enter an appearance in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

58. Citations against all persons in general, and

other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the Judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

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59. The registrars are not to allow probate of the will, or administration, with the will annexed, of any blind person, or of any obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents.

60. Whenever, subsequently to a grant having been made, the value of the personal estate and effects of the deceased person is re-sworn under a different amount, or any renunciation is filed, or any alteration is made in the grant, notice of such re-swearing, renunciation, or alteration is without delay to be forwarded by the registrars of the principal registry to all the district registrars.

61. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless such probate or administration be duly stamped in respect of the personal estate and effects of which the deceased died possessed in England, and unless the same appear from a stamp on the probate or letters of administration expressly denoting the same, or unless the same appear from a certificate of the commissioners of inland revenue or their proper officer.

62. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a

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bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her majesty's procurator-general, in order that he may determine whether it will be expedient to interfere on the part of the Crown ; save and except that when the deceased is domiciled within the duchy of Lancaster, notice is to be given to the solicitor for the duchy in London ; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.

63. The registrars are to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.



*FORMS of Instruments to be adopted in the
Principal Registry of the Court of Probate,
as nearly as the circumstances of each case
will allow.*

No. 1.—Notice of the entry of a Caveat in the
Principal Registry.

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To the Registrar of the District Registry of
Her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been
entered in this registry of the following tenor [*set out the caveat
at full length*].

This day of 18 .
(Signed) C. D.,
Registrar.

No. 2.—Affidavit of attesting Witness in proof of
the due Execution of a Will or Codicil dated
after 31st December, 1837.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

I, C. D., of in the county of make oath [*or
solemnly affirm*], that I am one of the subscribing witnesses
to the last will and testament [*or codicil, as the case may be*]
of the said C. D., late of in the county of de-
ceased, the said will [*or codicil*] being now hereunto annexed,
bearing date and that the said testator executed the
said will [*or codicil*] on the day of the date thereof, by sign-
ing his name at the foot or end thereof [*or in the testimonium
clause thereof, or in the attestation clause thereto, as the case
may be*], as the same now appears thereon, in the presence of
me and of the other subscribed witness thereto, both of
us being present at the same time, and we thereupon attested

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and subscribed the said will [or codicil] in the presence of the said testator.

(Signed) C. D.

Sworn at on the day of 18 before me
[person authorized to administer oaths under the act].

N.B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

No. 3.—Affidavit for the Commissioners of Inland Revenue.—For Executors.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [insert the names, residences, and titles or professions of the persons making the affidavit] make oath [or solemnly affirm], that I am one of the executors [or the executor] named in the last will and testament [insert codicils, if any] of the said A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at [insert place of death, or set forth the reason why the same cannot be furnished], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if any leaseholds insert clause No. 1* hereon endorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [if no leaseholds insert clause No. 2† hereon endorsed].

(Signed) C. D.

Sworn at on the day of before me
[person authorized to administer oaths under the act].

N.B.—Forms for the two leasehold clauses to be printed on the back of the affidavit.

* Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

† Form of Leasehold Clause No. 2.

"And I [or we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or

No. 3 a.—Affidavit for the Commissioners of
Inland Revenue.—For Administrators with the
Will annexed. Non-Contentious Business.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [insert the names, residences, and titles or professions of the persons making the affidavit], the party applying for administration with the will [insert codicils, if any] annexed of the personal estate and effects of A. B., late of deceased, make oath [or solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at [insert the place of death, or set forth the reason why the same cannot be furnished], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will [insert codicils, if any] annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [if leaseholds insert clause No. 1* hereon endorsed], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [if no leaseholds insert clause No. 2† hereon endorsed].

(Signed) C. D.

Sworn at on the day of before me
[person authorized to administer oaths under the act].

N.B.—Forms for the two leasehold clauses to be printed on the back of the affidavit.

No. 3 b.—Affidavit for the Commissioners of
Inland Revenue.—For Administrators.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [insert the names, residences, titles or professions of the persons making the affidavit] the party applying for let-

estates for years, whether absolute or determinable on a life or lives, to the best of my [or our] knowledge, information and belief."

* See note *, p. 268, ante.

† See note †, *ibid.*

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ters of administration of the personal estate and effects of the said A. B., late of make oath [or solemnly affirm] and say as follows: that the said deceased died on or about the day of one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if leaseholds insert clause No. 1* hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2† hereon endorsed*].

(Signed) C. D.
Sworn at on the day of before me
[*person authorized to administer oaths under the act*].

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 4.—Oath for Executor.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereto annexed to contain the true and original last will and testament [or last will and testament with codicils] of A. B. late of in the county of deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 ; and that the whole of the personal estate and effects of the said testator does not

* See note *, p. 268, ante.

† See note †, *ibid.*

amount in value to the sum of pounds, to the best of Non-
my [or our] knowledge, information and belief. (Signed) C. D. Contentious
Sworn at this day of 18 before Business.
me, E. F.

[Each testamentary paper to be marked by the persons sworn and the person administering the oath.]

No. 5.—Oath for Administrators with the Will.

**In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.**

I, C. D., of _____ in the county of _____ make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereunto annexed to contain the true and original last will and testament [or the last will and testament with _____ codicils] of A. B. late of _____ in the county of _____ deceased, and that the executor therein named is dead without having taken the probate thereof [or *as the fact may be*], and that I am the residuary legatee in trust named therein [or *as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [or will and _____ codicils] by paying his just debts and the legacies contained in his will [or will and _____ codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at _____ on the _____ day of _____ 18 ____; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of _____ pounds, to the best of my knowledge, information and belief.

Sworn at this day of (Signed) C. D. 18 before me,

[Each testamentary paper to be marked by the persons sworn and the person administering the oath.]

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say
[or solemnly affirm], that A. B. late of deceased, died

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a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [this must be altered in accordance with the circumstances of the case]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.

Sworn at this day of 18 before me,

No. 7.—Probate.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 the last will and testament [or the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on or about at was proved and registered in the said district registry of attached to her Majesty's Court of Probate,* and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [or as the case may be] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [or will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
Registrar.
(L.S.)

Extracted by

[To be written in the margin of Probate.] Sworn under
£ and that the testator died on or about the day of
18 .

* [So in the original.]

No. 8.—Letters of Administration with the Will annexed.

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In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at made and duly executed his last will and testament and did therein name . And BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by

Registrar.

(L.S.)

[*To be written in margin.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 9.—Letters of Administration.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 at intestate, were granted by her Majesty's Court of Probate to C. D. of the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by

Registrar.

(L.S.)

[*To be written in margin of Administration will.*] Sworn under £ and that the intestate died on or about the day of 18 .

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No. 10.—Double Probate.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 the last will and testament [or the last will and testament with codicils] of A. B., late of deceased, who died on or about at was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [or codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And BE IT FURTHER KNOWN, that on the day of 18 * the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

Extracted by

(Signed) G. H.,
Registrar.
(L.s.)

[To be written in margin.] Sworn under £ and that
the testator died on or about the day of 18 .

No. 11.—Exemplification of Probate or of Letters of Administration with Will annexed.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that upon search being made in the principal registry of her Majesty's Court of Probate, it plainly appears that on the day of in the year of our Lord 18 the last will and testament with codicils of A. B., late of deceased, who died at on or about 18 was proved by C. D., the executor named

* [In the margin.] "Former grant, Jan. 18 , under the same sum."

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[To be written in margin.] Sworn under £ and that
the testator died on the day of 18 .

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No. 13.—Special Administration with the Will of a Married Woman annexed.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 and of all other powers and authorities her enabling, made and executed her last will and testament, bearing date the day of 18 and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And BE IT ALSO KNOWN, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

(Signed) J. S.,

Extracted by

Registrar.

(L.S.)

[To be written in margin.] Sworn under £100, and that the testatrix died on the day of 18 .

No. 13 a.—Limited Probate of a Married Woman's Will.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 and made between E. F. of in the county of esquire, of the first part, the said deceased,

by her then name and description of A. G. of _____ in the _____ Non-
county of _____ spinster, of the second part, and H. I. of _____ Contentious
in the same county, gentleman, and the said C. B. of _____ Business.
aforesaid of the third part, made and executed her last
will and testament, bearing date the _____ day of _____ one
thousand eight hundred and _____ and thereof appointed L. M.
and O. P. executors.

And BE IT ALSO KNOWN, that on the _____ day of _____ 18____ the said last will and testament of the said A. B., heretofore annexed, was proved and registered in the said principal registry, and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
Registrar.
(L.S.)

Extracted by _____ (Signed) _____ Registrar.
(L.S.)
[To be written in margin.] Sworn under £ _____ and that
the testator died on the _____ day of _____ 18 _____.

No. 14.—Special Administration of the rest of the Goods of a Married Woman.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 and made between D. E. of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place,

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esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 and thereof appointed E. F. and G. H. executors. And BE IT ALSO KNOWN, that on the day of 18 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by authority of to the said E. F. and G. H., the executors named in the said will. And BE IT FURTHER KNOWN, that on the day of 18 letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

Extracted by (Signed) R. S.,
Registrar.
(L.S.)

[To be written in margin.] Sworn under £ and that
the deceased died on the day of 18 .

No. 15.—Administration de Bonis non.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., late of in the county of deceased, died on or about 18 at intestate, and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed and granted to C. D. [*insert the relationship or character of administrator*] (which letters of administration now remain of record in) who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just

and true account thereof whenever required by law so to do.

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Extracted by (Signed) E. F.,
Registrar.
(L.S.)

[To be written in margin of Administration will.] Sworn
under £ and that the intestate died on the day of
18 .

No. 16.—Administration Bond.

KNOW ALL MEN by these presents, that we, A. B., of
C. D., of and E. F., of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H., or to the Judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above-named A. B., the [as the case may be] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased, which have or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for and the same so made do exhibit or cause to be exhibited into the principal registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law; (that is to say,) do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the act of parliament, intituled "An Act for the better Settling of Intestates' Estates;" and if it shall hereafter appear that any last will and testament was made by the said

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deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of
K. L., Registrar,

[or
O. P., a Clerk in the Principal
Registry of her Majesty's Court
of Probate].

No. 17.—Administration Bond for Administrators with the Will.

KNOW ALL MEN by these presents, that we, A. B., of C. D., of and E. F., of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H., or to the Judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the principal registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as personal estate and effects will thereto extend, and the law charge and

further do make or cause to be made a true and just account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

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Signed, sealed and delivered in the presence of

K. L., Registrar

[or

O. P., a Clerk in the Principal Registry of her Majesty's Court of Probate].

No. 18.—Declaration of the Personal Estate and Effects of a Testator or an Intestate.

A true declaration of all and singular the personal estate and effects of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the district of which have at any time since his death come to the hands, possession or knowledge of C. D., the administrator with the will of the said A. B. [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D., as follows, to wit:—

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to

[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular].

£	s.	d.

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 18 the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory,

Before me

[person authorized to administer oaths under the act].

No. 19.—Justification of Sureties.

Non-Contentious Business.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B. deceased.

We, C. D. of The day of 18 . and E. F. of jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E. F. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D. and
E. F. were duly sworn to
the truth of this affidavit.

Before me

[*person authorized to administer oaths under the act*].

No. 20.—Election by Minors of a Guardian.

In her Majesty's Court of Probate. The Principal Registry.

WHEREAS A. B., late of in the county of de-
ceased, died on or about the day of 18 at
 intestate, a widower, leaving C. D., E. F. and G. H.,
his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said
E. F. being also a minor of the age of nineteen years only,
and the said G. H. being an infant of the age of six years
only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L. of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B. deceased, to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [or for the purpose of renouncing for us, and on our behalf all our right, title and interest to and in the letters of administration, &c. as the case may be] [add, in cases where a proctor, solicitor or attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor or attorney, to file or cause to

be filed this our election for us in the said principal registry of her Majesty's Court of Probate]. Non-Contentious Business.

IN WITNESS whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed and delivered in the presence of

[*One disinterested witness sufficient*].

No. 21.—Renunciation of Probate and Administration with the Will annexed.

In her Majesty's Court of Probate. The Principal Registry.

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at ; and whereas he made and duly executed his last will and testament, bearing date the day of 18 [*if there are codicils their dates should be also inserted*], and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [*and codicils, if any*], and to the letters of administration with the said will [*and codicils, if any*] annexed, of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor or attorney appears for the person renouncing*, and I hereby appoint E. F. of my proctor, solicitor or attorney, to file or cause to be filed this renunciation for me in the said principal registry of her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of

G. H.

[*One disinterested witness sufficient*].

No. 22.—Renunciation of Administration.

In her Majesty's Court of Probate. The Principal Registry.*

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at intes-

* This is to be varied according to the fact.

Non-
Contentious
Business.

tate, a widower; and whereas I, C. D. of am his
natural lawful child, and his only next of kin:

Now I, the said C. D. do hereby declare that I
have not intermeddled in the personal estate and effects of
the said deceased, and do hereby expressly renounce all my
right and title to the letters of administration of the personal
estate and effects of the said deceased [*add in cases where a pro-
ctor, solicitor or attorney appears for the person renouncing*, and I
hereby appoint E. F. of my proctor, solicitor or attor-
ney, to file or cause this renunciation to be filed for me in the
principal registry of her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal
this day of 18 .

Signed, sealed and delivered by the said C. D. in the
presence of

G. H.

[*One disinterested witness sufficient*].

No. 23.—Subpœna in a Proceeding in Common Form to bring in a Script.

VICTORIA, by the grace of God of the United Kingdom
of Great Britain and Ireland Queen, Defender of the
Faith.

To of .

WHEREAS it appears by a certain affidavit filed in the
principal registry of our Court of Probate [*or filed in the dis-
trict registry of attached to our Court of Probate*],
bearing date the day of 18 and made by
of that a certain original paper or script, being
or purporting to be testamentary, to wit [*here describe the
paper*], bearing date the day of 18 is now in
your possession or under your control:

NOW THIS IS TO COMMAND you, that within eight days
after service hereof on you, inclusive of the day of such ser-
vice, you do bring into and leave in the principal registry of
our said court [*or the district registry of attached to
our said court*] the said original paper now in the possession
of you the said or in case the said original paper be not
in your possession or under your control, that you, within
eight days after the service hereof on you, inclusive of the day
of such service, do file in the principal registry of our said
court [*or in the district registry of attached to our said
court*], an affidavit to that effect, and therein set forth what
knowledge you have of and respecting the said script: And

this you shall in no wise omit under the penalty of one hundred pounds. Witness *[insert the name of the Judge]*, at the Court of Probate, the day of 18 in the year of our reign.

Non-
Contentious
Business.

Indorsement to be made of the Service.

This subpoena was served by G. H. on of on the day of 18 .

(Signed) G. H.

No. 24.—Affidavit of Handwriting.

In her Majesty's Court of Probate. The Principal Registry.

I, A. B. of in the county of make oath *[or solemnly affirm]*, that I knew and was well acquainted with C. D., late of in the county of deceased, who died on the day of at for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus *[include in these recitals the date of the will]*, "C. D." I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit *[or made this solemn affirmation]*.

Before me,

E. F.

[person authorized to administer oaths under the act].

No. 25.—Affidavit of Plight and Condition and Finding.

In her Majesty's Court of Probate. District Registry of .

I, A. B. of in the county of make oath *[or solemnly affirm]*, that I am the sole executor named in the

Non-
Contentious
Business.

paper writing now hereunto annexed, purporting to be and contain the last will and testament of E. F., late of in the county of deceased (who died on the day of at), the said will bearing date the day of beginning thus ending thus and being subscribed thus "C. D.," and having viewed and perused the said will and particularly observed that *[here recite the finding of the will, and the various obliterations, interlineations, erasures and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit]*: I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found *[or as the case may be]*.

On the day of 18 the said A. B. and C. D. were duly sworn at to the truth of this affidavit *[or made this solemn affirmation before me]*.

I. J.

[person authorized to administer oaths under this act].

No. 26.—Affidavit of Search.

In her Majesty's Court of Probate. The Principal Registry.

I, A. B. of in the county of make oath *[or solemnly affirm]* that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of C. D., late of deceased, who died on the day of in the year 18 at the said will beginning thus, " , " ending thus, " In witness whereof I have hereunto set my hand this "day of in the year of our Lord one thousand eight "hundred and fifty-four" *[or as the case may be]*, and being thus subscribed, "C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied *[or that the said will is without date, or as the case may be]*, I further make oath *[or solemnly affirm]* that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath *[or solemnly affirm]*, that I verily believe the said deceased died without having left any will,

codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of.

Non-
Contentious
Business.

A. B.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation before me.]

G. H.

[person authorized to administer oaths under the act].

[This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will].

No. 27.—Caveat.

In her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B., late of deceased, who died on the day of at unknown to C. D. of having interest [or to E. F. of proctor, solicitor or attorney of parties having interest].

Dated this day of 18 .
(Signed) C. D. of [or E. F. of
the proctor, solicitor or attorney of parties having interest].

No. 28.—Warning to Caveat.

In her Majesty's Court of Probate. The Principal Registry.

To A. B. of [or to C. D. of proctor, solicitor or attorney of parties having interest].

You are hereby WARNED, within six days* after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the day of 18 and to set forth your [or your client's] interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., district registrar.

* [To be inserted in margin] Note.—These six days are to be exclusive of Sunday.

**Non-
Contentious
Business.**

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [or on
C. D. of the proctor, solicitor or attorney] by whom
the caveat was entered in respect of the personal estate and
effects of the within-named deceased at on the
day of 18 .

(Signed) I. K.

[or, The duplicate of this warning signed by the said X. Y.,
was sent by the public post, directed to the said A. B. (or
C. D.) by whom the caveat was entered in respect of the personal
estate and effects of the within-named deceased at
on the day of 18 .

(Signed) I. K.]

FEEs

TO BE TAKEN IN THE

PRINCIPAL REGISTRY OF THE COURT OF PROBATE

IN

NON-CONTENTIOUS BUSINESS.



Probates or Letters of Administration with Will annexed.

For every probate when the personal estate is sworn to be £ s. d.
under 100*l.*, or any sum less than 100*l.* 0 1 0

For every probate when the personal estate is of the value of
100*l.* and under 4,000*l.*, or any sum less than 4,000*l.*, a fee
of 1*s.* 6*d.* in the pound on the amount of stamp duty payable
on such probate.

For every probate when the personal estate is of the value of
4,000*l.* and upwards, the following fees:—

If the personal estate is sworn to be—

Under the value of £5,000	..	..	..	4	15	0
6,000	..	..	..	5	0	0
7,000	..	..	..	5	5	0
8,000	..	..	..	5	10	0
9,000	..	..	..	5	15	0
10,000	..	..	..	6	0	0
12,000	..	..	..	6	5	0
14,000	..	..	..	6	10	0
16,000	..	..	..	6	17	6
18,000	..	..	..	7	5	0
20,000	..	..	..	7	12	6
25,000	..	..	..	8	2	6
30,000	..	..	..	8	15	0
35,000	..	..	..	9	7	6
40,000	..	..	..	10	6	3
45,000	..	..	..	11	5	0
50,000	..	..	..	12	3	9
60,000	..	..	..	13	2	6
70,000	..	..	..	15	0	0
80,000	..	..	..	16	17	6

Probates—continued.			£	s.	d.
Under the value of £	90,000	.. ..	18	15	0
	100,000	.. ..	20	12	6
	120,000	.. ..	21	11	3
	140,000	.. ..	23	8	9
	160,000	.. ..	25	6	3
	180,000	.. ..	27	3	9
	200,000	.. ..	29	1	3
	250,000	.. ..	30	18	9
	300,000	.. ..	35	12	6
	350,000	.. ..	40	6	3
	400,000	.. ..	41	17	6
	500,000	.. ..	43	8	9
	600,000	.. ..	46	6	3
	700,000	.. ..	49	13	9
	800,000	.. ..	52	16	3
	900,000	.. ..	55	18	9
	1,000,000	.. ..	59	1	3
Above 1,000,000	.. ..	.. ..	62	3	9
For registering and collating wills, if three folios of ninety words each, or under	.. ..	.. ..	0	4	6
If above three folios of ninety words each, per folio	.. ..	.. ..	0	1	6
In cases of probate for Queen's pay or prize money, the effects being under 100 <i>l.</i> , without reference to the length of the will	.. ..	.. ..	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or litigated, or cessate probate, if the will is four folios of ninety words each or under, including parchment	.. ..	.. ..	0	6	0
If above four folios of ninety words each, per folio, including parchment	.. ..	.. ..	0	1	6
For every double or cessate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.	.. ..	.. ..	0	12	6
For every double or cessate probate, when the personal estate is of the value of 450 <i>l.</i> and upwards	.. ..	.. ..	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.	.. ..	.. ..	0	6	0
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> and upwards	.. ..	.. ..	0	12	6
For engrossing, exemplifying, and collating a will of four folios of ninety words each or under, including parchment.	.. ..	.. ..	0	6	0
If above four folios of ninety words each, per folio (including parchment)	.. ..	.. ..	0	1	6
For every exemplification of probate	.. ..	.. ..	1	1	0

Letters of Administration.

For every grant of letters of administration, when the personal estate is sworn to be under 100*l.* or any sum less than 100*l.*, a fee of £ *s.* *d.*
0 1 0

For every grant of letters of administration, when the personal estate is of the value of 100*l.* and under 2,000*l.*, or any sum less than 2,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such letters of administration.

For every grant of letters of administration, when the personal estate is of the value of 2,000*l.* and upwards, the following fees:—

Under the value of £3,000	..	..	..	4	13	9
4,000	..	..	..	4	17	6
5,000	..	..	..	5	5	0
6,000	..	..	..	5	12	6
7,000	..	..	..	6	0	0
8,000	..	..	..	6	7	6
9,000	..	..	..	6	15	0
10,000	..	..	..	7	2	6
12,000	..	..	..	7	10	0
14,000	..	..	..	7	17	6
16,000	..	..	..	8	8	9
18,000	..	..	..	9	0	0
20,000	..	..	..	9	11	3
25,000	..	..	..	9	16	3
30,000	..	..	..	11	5	0
35,000	..	..	..	12	3	9
40,000	..	..	..	13	11	3
45,000	..	..	..	15	0	0
50,000	..	..	..	16	7	6
60,000	..	..	..	17	16	3
70,000	..	..	..	20	12	6
80,000	..	..	..	23	8	9
90,000	..	..	..	26	5	0
100,000	..	..	..	29	1	3
120,000	..	..	..	30	9	6
140,000	..	..	..	33	5	9
160,000	..	..	..	36	2	0
180,000	..	..	..	38	18	3
200,000	..	..	..	41	14	6
250,000	..	..	..	44	10	9
300,000	..	..	..	46	17	6
350,000	..	..	..	49	4	6
400,000	..	..	..	51	11	3
500,000	..	..	..	53	18	3
600,000	..	..	..	58	12	0

Letters of Administration— <i>continued</i> .			£	s.	d.
Under the value of £700,000	..	..	63	5	9
800,000	..	..	67	19	6
900,000	..	..	72	13	3
1,000,000	..	..	77	7	0
Above 1,000,000	..	..	82	0	9
For every duplicate and triplicate letters of administration when the personal estate is under 300 <i>l</i> . or any sum less than 300 <i>l</i> ., the same fee as on the first grant of letters of administration.					
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300 <i>l</i> . and upwards					
..	..	..	0	12	6
For every exemplification of letters of administration					
..	..	..	1	1	0
For every grant of letters of administration with will annexed de bonis non or cessate when the personal estate is under 450 <i>l</i> . or any smaller sum, the same fee as on the first grant.					
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450 <i>l</i> . and upwards					
..	..	..	0	12	6
For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under, including parchment					
..	..	..	0	6	0
If above four folios of ninety words each, per folio, including parchment					
..	..	..	0	1	6
For every grant of letters of administration de bonis non or cessate, when the personal estate is under 300 <i>l</i> . or any smaller sum, the same fee as on the first grant.					
For every grant of letters of administration de bonis non or cessate, when the personal estate is of the value of 300 <i>l</i> . and upwards					
..	..	..	0	12	6
For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—					
If the personal estate is under the value of 20 <i>l</i> . 1 <i>s</i> . per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.					
If the personal estate is of the value of 20 <i>l</i> . and upwards, 2 <i>s</i> . per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.					
For articles entered into by administrators to pay creditors pro rata, per folio of ninety words each					
..	..	..	0	2	0
For the bond for the performance of the articles, per folio of ninety words					
..	..	..	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given					
..	..	..	0	5	0
For every certificate that additional security has been given					
..	..	..	0	1	0

For every search for will or grant of letters of administration or any other document filed in the principal registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	£	s.	d.
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the search	0	1	0
For looking up and producing any document filed in the registry other than an original will or administration act ..	0	1	0
For every office copy or extract of a record, will, or probate, or administration act, or other document filed in the principal registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
If the will or other document is 200 years old and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, per folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6
If exceeding five folios of ninety words, per folio	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under	0	5	0
If exceeding twenty folios, for every additional two folios ..	0	0	3
If a copy is required to be printed, for every eight folios of ninety words (in addition to a manuscript copy for the printer, at 6d. per folio of ninety words)	0	5	0
For every copy of a will made for the Inland Revenue Office, per folio	0	0	6
For every abstract of an administration act for the Inland Revenue Office	0	3	3
For every attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere, within three miles of the principal registry, except in the Court of Probate and the Court for Divorce and Matrimonial Causes at Westminster	1	1	0
For second and each subsequent attendance in any of the courts of law or equity in London or Westminster, except as aforesaid, in the same term or sittings after term	0	10	6
For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere, beyond the distance of three miles from the principal registry, exclusive of travelling expenses	1	1	0
For every receipt for a document or documents delivered out of the principal registry	0	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the district registrars	0	1	0

For every warning to a caveat issuing from the principal registry	£ s. d.
For messengers' attendance with warning to caveat within three miles of the principal registry	0 5 0
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same, such a reasonable fee as shall be agreed upon at the time.	0 2 6
For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under :—	
For every year after the year in which the deceased died ..	0 0 6
In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such district registries.	
For filing affidavit for the Inland Revenue Office on granting probate on letters of administration for Queen's pay or prize money	0 1 0
For filing every other affidavit and other document brought into and deposited in the principal registry, except the oaths for executors, administrators or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0 2 6
For every receipt for documents left in the principal registry in order to obtain a grant of probate or letters of administration with or without will annexed	0 1 0
For depositing every will of a person deceased in the principal registry for safe custody	0 10 0
For depositing every will of a living person for safe custody, including the deposit receipt	1 1 0
For taxing every bill of costs, inclusive of the registrar's certificate	0 5 0
For every oath administered by the registrars	0 1 0
For transfer of an articulated clerk	1 0 0



FEES

*To be taken FOR THEIR OWN USE by Proctors, Solicitors
and Attornies practising in the Court of Probate
and in the District Registries thereof, in*

NON-CONTENTIOUS BUSINESS.

Fees of Probates.

Effects sworn under	Oath of Executors and attend- ance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engross- ing and collating the Will, three folios of ninety words or under.†	Probate under seal.	Extract- ing.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 8 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6

† If more than 3 folios, 1s. 6d. per folio.

Fees of Probates—continued.

Effects sworn under	Oath of Executors and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under.†	Probate under seal.	Extracting.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0
600,000	10 0	10 0	4 6	46 6 3	13 4	1 1 0
700,000	10 0	10 0	4 6	49 13 9	13 4	1 1 0
800,000	10 0	10 0	4 6	52 16 3	13 4	1 1 0
900,000	10 0	10 0	4 6	55 18 9	13 4	1 1 0
1,000,000	10 0	10 0	4 6	59 1 3	13 4	1 1 0
Above } that sum }	10 0	10 0	4 6	62 3 9	13 4	1 1 0

† If more than 3 folios, 1s. 6d. per folio.

Fees of Letters of Administration with Will annexed.

In addition to the above fees for attendance on execution of the bond if the effects are—

					s.	d.
5 <i>l.</i> and under 20 <i>l.</i>	..	..	..	..	0	19
20 <i>l.</i> and under 100 <i>l.</i>	..	..	..	..	1	8
100 <i>l.</i> and upwards	..	..	..	..	3	4

Fees of Letters of Administration.

Effects sworn under	Oath of Ad- ministrator and attend- ance on his being sworn, and on execution of the Bond.	Affidavit for Inland Re- venue and attendance on Adminis- trator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.			
£	s.	d.	£	s.	d.	£	s.	d.
5	2	6	0	1	0	1	0	—
20	3	4	0	1	0	3	4	0 1 0
50	5	0	0	1	6	4	8	0 2 0
100	6	8	0	3	0	6	8	0 2 0
200	10	0	0	4	6	6	8	0 2 0
300	13	4	0	12	0	6	8	0 2 0
450	13	4	0	16	6	6	8	0 2 0
600	13	4	1	2	6	6	8	0 2 0
800	13	4	1	13	0	6	8	0 2 0
1,000	13	4	2	5	0	6	8	0 5 0
1,500	13	4	3	7	6	6	8	0 5 0
2,000	13	4	4	10	0	13	4	0 5 0
3,000	13	4	4	13	9	13	4	0 7 6
4,000	13	4	4	17	6	13	4	0 7 6
5,000	13	4	5	5	0	13	4	0 7 6
6,000	13	4	5	12	6	13	4	0 7 6
7,000	13	4	6	0	0	13	4	0 7 6
8,000	13	4	6	7	6	13	4	0 7 6
9,000	13	4	6	15	0	13	4	0 7 6
10,000	13	4	7	2	6	13	4	0 7 6
12,000	13	4	7	10	0	13	4	0 7 6
14,000	13	4	7	17	6	13	4	0 7 6
16,000	13	4	8	8	9	18	4	0 7 6

Fees of Letters of Administration—continued.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	9 16 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0
600,000	13 4	10 0	58 12 0	13 4	1 1 0
700,000	13 4	10 0	63 5 9	13 4	1 1 0
800,000	13 4	10 0	67 19 6	13 4	1 1 0
900,000	13 4	10 0	72 13 3	13 4	1 1 0
1,000,000	13 4	10 0	77 7 0	13 4	1 1 0
Above thatsum }	13 4	10 0	82 0 9	13 4	1 1 0

Fees of Double or Cessate Probates.

If the effect are sworn under	Attendance in the Registry and looking up the Will and bespeaking the engrossment.		Oath of the executor and attendance on his being sworn.		Affidavit for Inland Revenue Office, and attendance on the executor being sworn.		Drawing and copying statement in support of application for the duty-paid Stamp.		Attending the Commissioners of Stamps and procuring the duty-paid Stamp.		Double Probate under seal.		Extracting.		Clerk.	
	£.	d.	£.	d.	£.	d.	£.	d.	£.	d.	£.	d.	£.	d.	£.	d.
5	3	4	2	6	2	6	—	—	—	—	1	0	1	0	—	—
20	3	4	2	6	2	6	—	—	—	—	1	0	3	4	1	0
100	6	8	5	0	5	0	6	8	13	4	1	0	6	8	2	0
200	6	8	6	8	6	8	6	8	13	4	3	0	6	8	2	0
300	6	8	10	0	10	0	6	8	13	4	7	6	6	8	2	0
450	6	8	10	0	10	0	6	8	13	4	12	0	6	8	2	0
600	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
800	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
1,000	6	8	10	0	10	0	10	0	13	4	12	6	6	8	2	0
1,500	6	8	10	0	10	0	10	0	13	4	12	6	6	8	5	0
2,000	6	8	10	0	10	0	10	0	13	4	12	6	6	8	5	0
3,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	5	0
4,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	5	0
5,000	6	8	10	0	10	0	10	0	13	4	12	6	13	4	7	6
Above 5,000																

The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards is 1*l.* 1*s.*

Exemplification of Probate or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification						£	s.	d.
..	..	..	..	..	..	0	6	8
Exemplification under seal and stamp						1	1	0
Extracting	..	..	..	..	..	0	6	8
Clerks	..	..	..	..	..	0	2	6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	£	s.	d.
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0	6	8
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	10	0
Duplicate or triplicate probate or letters of administration, with or without the will annexed, ...	0	13	4
If the personal estate is under 450 <i>l.</i> , or any smaller sum, the same fee as on the first grant.			
If the personal estate is of the value of 450 <i>l.</i> and upwards			
Extracting	0	12	6
Clerks	0	6	8
	0	2	6

Letters of Administration with or without Will annexed de Bonis non or Cessate.

If the effects are sworn under	Attending in the Registry, looking up and taking account of the former Grant.	Oath of the administrator and attendance on his being sworn, and on execution of the Bond.	Assdavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis administration with Will under seal and duty-paid Stamp.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
400	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450								

The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*

Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn :—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar, per folio of seventy-two words	0	0	4
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8
Engrossing and collating the will, three folios of ninety words or under	The same fees as on ordinary probates.		
Special or limited probate, under seal			
Extracting			
Clerk			

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn :—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration, under seal and stamp			
Extracting			
Clerks			

**Office Copies of, or Extracts from, Records, Wills, and
other Documents.**

For attendance in the registry for searching for a record, will or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, <i>including</i> the ordering of a copy	£	s.	d.
For every five years after the first five years	0	5	0
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	3	4
For collating an office copy or extract of a record, will or other document, with the original, including extracting fee, per folio of ninety words	0	0	4
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	0	2
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0

Caveats.

For attendance in the registry and entering caveat	£	s.	d.
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8

**Affidavits other than the Affidavits and Oaths included in
the Fees of Probate and Letters of Administration and
Declarations of Personal Estate and Effects.**

For taking instructions for every affidavit or declaration of personal estate and effects	£	s.	d.
For drawing and fair copy of the same, per folio of seventy-two words	0	6	8
For every copy thereof, per folio of seventy-two words	0	1	0
For every copy thereof, per folio of seventy-two words	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents prepared by Proctors, Solicitors or Attorneys.

For drawing and fair copy of every instrument of renunciation, consent, letter of attorney, or other document prepared as	£	s.	d.
above, per folio of seventy-two words	..	0	1 0
For every fair copy, per folio of seventy-two words ..	..	0	0 4

~~22nd-12th-18th-17th-16th-15th-14th-13th-12th-11th-10th-9th-8th-7th-6th-5th-4th-3rd-2nd-1st~~

RULES, ORDERS, AND INSTRUCTIONS

For the District Registrars of her Majesty's Court of Probate, made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England," 20 & 21 Vict. c. 77, in respect of

NON-CONTENTIOUS BUSINESS.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the act, and the warning of caveats.

Non-Contentious Business.

1. Application for probate or letters of administration may be made at the principal registry in all cases. Application may be also made at a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise.
2. Such applications may be made through a proctor, solicitor or attorney, or in person.
3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.
4. In no case should the district registrar allow the probate or letters of administration to issue until all the inquiries which he may see fit to inat-

Non-
Contentious
Business.

tute have been answered to his satisfaction, and this refers more particularly to applications made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No district registrar shall take out probate or letters of administration for himself in his own district.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December, 1837.

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will, and see whether it purport to be signed by the testator or by some other person in his presence and by his direction, and subscribed by two witnesses, according to the provisions of 1 Vict. c. 26. sect. 9, and 15 & 16 Vict. c. 24, and in no case must he proceed further if the will be not so signed and subscribed.

7. If the will be signed by or for the testator and subscribed by two witnesses, the district registrar must then refer to the attestation clause (if any), and consider whether, from the wording thereof, the will purports to have been executed in accordance with 1 Vict. c. 26, sect. 9.

8. If there be no attestation clause to the will, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of the

act in reference to the execution of the will were in fact complied with ; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.

9. If, on perusing the affidavit, it appear that the requirements of the statute were not complied with, the district registrar must refuse probate.

10. If, on perusing the affidavit or affidavits, setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the district registrar must transmit a statement of the matter to the registrars of the principal registry, whose duty it will then be to obtain the directions of the Judge thereon.

11. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will ; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

12. Having satisfied himself that the will was duly executed, the district registrar must carefully inspect the same, to see whether there are any interlineations or alterations appearing in it and requiring to be accounted for. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

13. Where interlineations or alterations appear in the will (unless duly executed or accounted for by the attestation clause), an affidavit or affidavits in proof of

Non-Contentious Business.

their having existed in the will before its execution must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

14. In like manner, with regard to erasures and obliterations, they are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated can, upon inspection of the paper, be readily ascertained, they must form part of the probate.

15. In every case of words having been erased which might have been of importance an affidavit must be required.

16. If reasonable doubt exist in regard to any interlineation, alteration, erasure or obliteration, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry, as directed by the statute (sect. 50).

17. If a will contain a reference to any deed, paper, memorandum or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of such will, the production of such deed, paper, memorandum or other document should be required, with a view to ascertain whether it be entitled to probate, and if not produced, its non-production should be accounted for.

18. No deed, paper, memorandum or other document can form part of a will or codicil, unless it were in existence at the time when the will or codicil was executed.

Non-
Contentious
Business.

19. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum or other document may have been attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum or other document should be required, and if not produced its non-production should be accounted for. If doubt exists as to whether any deed, paper, memorandum or other document be entitled to probate, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry, as directed by section 50 of the statute.

20. The above rules and orders respecting wills apply equally to codicils.

21. In case of probate or administration with the will of a married woman annexed, made by virtue of a power, the power or powers under which the will purports to have been made should be specified in the grant.

22. No grant of probate or administration with the will annexed, the will being *simply* an execution of a special power, should be made without communication with the registrars of the principal registry.

23. The right of parties to administration with the will annexed, and administration (with the will annexed) *de bonis non*, depends so entirely upon the circumstances of each particular case taken in connexion with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry, for the directions of the Judge thereon.

As to Probate of Wills, Codicils and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

Non-Contentious Business.

24. It is not necessary that a will, codicil or testamentary paper made before 1st January, 1838, should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention, that it should operate as his will, codicil or testamentary disposition, must be proved clearly by circumstances.

25. If the will, codicil or testamentary paper be signed by the testator at the end of it, and attested by two disinterested witnesses, the district registrar (although there be no clause of attestation) must consider it as *prima facie* entitled to probate.

26. In cases where the will, codicil or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written, or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will, or otherwise notified his intention that it should operate as such.

27. If the will, codicil or testamentary paper is signed at the end of it by the testator, but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

28. If the will, codicil or testamentary paper is signed at the end of it by the testator, and attested

by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

Non-Contentious Business.

29. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee, or as the husband or wife of a legatee under such will, codicil or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

30. In all cases the district registrar should carefully inspect and peruse the will or testamentary paper, with a view to ascertain that it is a complete document. If, for example, an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested; or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *prima facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate. Also, any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise, must be accounted for.

31. Every fact leading to a presumption of abandonment or revocation of the paper on the part of the testator must be accounted for.

32. Such cases will generally, in consequence of the lapse of time, be doubtful cases, and proper to be transmitted to the registrars of the principal registry, under section 50 of the act.

Non-
Contentious
Business.

33. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

34. With respect to deeds, papers, memoranda or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing instructions as to wills bearing date since the 31st of December, 1837, will apply.

35. It is to be remembered that a will made before the 1st of January, 1838, is confirmed by a codicil duly executed on or after that day.

As to Letters of Administration.

36. The duties of the district registrar in granting administration are in many respects the same as in cases of probate. He is to ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration, and to see that the applicant has been sworn as required by statute 55 Geo. 3, c. 184.

37. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the district registrar may require proof by affidavit or statutory declaration, that notice of such application has been given to such other next of kin.

38. Limited administrations are not to be granted unless every person entitled in distribution to the personal estate has consented or renounced, or has been cited and failed to appear, except under the direction of the Judge.

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39. No person entitled to a grant of administration of the personal estate and effects of the deceased generally will be permitted to take a limited grant.

40. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

41. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

42. There are many administrations of a special character, which will need attention on the part of the district registrars. In special cases the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

43. Grants of administration will continue to be made as heretofore to the guardians of infants and minors, for the use and benefit of such infants and minors during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

44. No probate or letters of administration, with

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the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge.

45. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the Judge.

General Instructions for the District Registrars.

46. In cases where the district registrar receives his instructions from the parties interested, and without the intervention of any proctor, solicitor or attorney, he will take care to ascertain the value of the estate and effects of the deceased as correctly as circumstances allow.

47. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the Judge.

48. The district registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased or of the party applying for the grant.

49. In every case where a grant of probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the district registrar. If the certificate is not satisfactory the district registrar is to require an affidavit, or to communicate with the principal registry.

50. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the district registrar to the registrars of the principal registry (as directed by sect. 49), are to contain (in addition to the particulars therein

specified) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

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51. District registrars should take care that the oath of administrators, and of administrators with the will annexed, is so worded as to clear off all persons having a prior right to the grant. In these cases, the grant should show on the face of it how the prior interests have been cleared off.

52. Under the statute the Court of Probate has power to appoint an administrator other than the person who prior to the act would have been entitled to the grant (sect. 73). Whenever the court sees fit to exercise such a power, the fact should be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

53. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

54. Every will or copy of a will to which an executor or administrator with the will is sworn should be marked by such executor or administrator, and by the person before whom he is sworn.

55. In cases where it is necessary to issue a citation to accept or refuse probate of a will, or to accept or refuse letters of administration, or where it is necessary to issue a subpoena to bring in a testamentary paper, and in all similar cases, the district registrar is to communicate with the registrars of the principal registry, who will then issue such citation, subpoena or other requisite instrument in accordance with the direction of the Judge.

56. The district registrar is not, in any case in which a will has been produced to him for probate,

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or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased as having died intestate, without previous communication with the registrars of the principal registry.

57. When motions are to be made before the Judge in court with regard to applications for probate and administration made at the district registries, the district registrars are to transmit all original papers and documents to the principal registry, and the same, after the directions of the court have been taken, will be returned, with the directions of the Judge thereon.

58. The original papers are also to be forwarded whenever an inspection of them is necessary, in order to enable the registrars of the principal registry to answer the questions submitted to them by the district registrar.

59. Papers and other documents may be transmitted by the district registrars to the registrars of the principal registry through the post office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered if thought necessary.

60. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney properly attested.

61. The addition and true place of abode of every person making an affidavit is to be inserted therein.

62. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

63. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

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64. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the district registrar, commissioner or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the district registrar, commissioner or other person before whom the affidavit was made.

65. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor or attorney, or before a clerk of his proctor, solicitor or attorney.

66. A proctor, solicitor or attorney, and their clerks respectively, if acting for any other proctor, solicitor or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

67. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

68. The district registrar shall immediately upon a caveat being lodged send a copy thereof to the registrars of the principal registry, and also to the registrars of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have a fixed place of abode at the time of his death.

69. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

70. A caveat shall be warned at the place men-

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tioned in it as the address of the person who entered it.

71. It shall be sufficient for the warning of a caveat that the district registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

72. Any person intending to oppose a grant of probate or administration for which application has been made to a district registrar is to appear before such district registrar, either personally, or by his proctor, solicitor or attorney, and signify such his intention; otherwise such person is to cause an appearance to be entered for him in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

73. The district registrar shall, upon being informed of any such intention to oppose a grant, require the person intending to oppose the same to furnish him with his name and address, and in case of a proctor, solicitor or attorney, with his client's name and address, and shall forward a notice of such declared intention, with the name and address of the party, and of his proctor, solicitor or attorney, (if any,) to the registrars of the principal registry.

74. The district registrar shall in no case, after he has forwarded to the registrars of the principal registry a notice of intention to oppose a grant, take any further step in respect of such grant, except under the directions of the Judge of the Court of Probate or of a County Court Judge.

75. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the

Judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.

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76. The lists of grants of probate and administration required under sect. 51, are to be furnished by the district registrars on the first and every other Thursday in the month, and are to contain the date of each grant; the name of the registry in which each grant was made; the christian and surname of each testator and intestate; the place and time of death of such testator and intestate; the names and description of each executor and administrator to whom the grant has been made; and the value of the personal estate and effects in each case.

77. A district registrar is not to grant probate, or administration with the will annexed, of the will of any blind person, or of any obviously illiterate or ignorant person, unless he has previously satisfied himself that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents. Where such information is not forthcoming, the district registrars are to communicate with the registrars of the principal registry.

78. In ordinary cases, where the property is *bonâ fide* under the value of fifty pounds, one surety only may be taken to the administration bond.

79. In all cases of limited or special administration two sureties are always to be required to the administration bond, and the bond is to be given in double the amount of the fund to be dealt with under the administration.

80. Whenever the value of the personal estate and effects of any deceased person is re-sworn under a different amount, or any renunciation is subsequently filed, or any alteration is subsequently made in the grant, notice of such re-swearing, renunciation or alteration is to be immediately forwarded by the district registrar to the registrars of the principal registry.

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81. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her majesty's procurator-general, in order that he may determine whether it will be expedient to interfere on the part of the crown, save and except that when the deceased is domiciled within the duchy of Lancaster, notice is to be given to the solicitor for the duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.

82. Bills of proctors, solicitors or attornies, presented to the district registrars for taxation, are to be forwarded to the principal registrars, with any remarks which the district registrars may see necessary.

83. The district registrar is to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written, and are to reject those which are not so.

84. The district registrars are, in every case of doubt or difficulty, to communicate with the registrars of the principal registry.



FORMS of Instruments to be adopted by the Districts, as nearly as the circumstances of each case will allow.

No. 1.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate. Non-Contentious Business.

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the day of 18 [and codicil or codicils bearing date the day of 18] of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the said district of by C. D. of the executor [or by E. F. of the proctor, solicitor or attorney of C. D. the executor] named in the said will [or codicil], in the words following :

[Here insert the extract from the will or codicil].

(Signed)

G. H.,

District Registrar.

No. 1 a.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the Will annexed.

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration with the will annexed, the said will bearing date the day of 18 [or will and codicil or codicils annexed, the said will bearing date the day of 18 and the said

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codicil bearing date the day of 18] of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the said district of by C. D. of the residuary legatee [or as the case may be] named in the said will [or by E. F. of the proctor, solicitor or attorney of C. D., the residuary legatee named in the said will], in the words following :
[Here insert the extract from the will or codicil].

(Signed) G. H.,
District Registrar.

No. 1 b.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.

The District Registry of

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at intestate, having at the time of his death a fixed place of abode at within the said district of a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, by C. D. of one of the lawful cousins german and next of kin of the deceased [or by E. F. of the proctor, solicitor or attorney of C. D., one of the, &c.].

(Signed) G. H.,
District Registrar.

No. 1 c.—Notice of the Entry of a Caveat in a District Registry.

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the district registry of attached to her Majesty's Court of Probate, of the following tenor [set out the caveat at full length].

This day of 18 .
(Signed) C. D.,
District Registrar.

No. 2. Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

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In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath [or solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [or codicil, as the case may be] of the said C. D.* late of in the county of deceased, the said will [or codicil] being now hereunto annexed, bearing date and that the said testator executed the said will [or codicil] on the day of the date thereof, by signing his name at the foot or end thereof, [or in the testimonium clause thereof, or in the attestation clause thereto, as the case may be], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [or codicil] in the presence of the said testator.

(Signed) C. D.

Sworn at on the day of 18 before me [person authorized to administer oaths under the act].

N.B.—If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.

No. 3.—Affidavit for the Commissioners of Inland Revenue.—For Executors.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [insert the names, residences, titles, or professions of the persons making the affidavit] make oath [or solemnly affirm], that I am one of the executors [or the executor] named in the last will and testament [insert codicils, if any] of the said A. B. late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at [insert place of death, or set forth the reason why the same cannot be furnished] and that the said deceased at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said

* [So in the original.]

the said will [*insert codicils, if any*] annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert clause No. 1* hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief, [*if no leaseholds insert clause No. 2† hereon endorsed*].

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(Signed) C. D.
Sworn at on the day of before me
[*person authorized to administer oaths under the act*].

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

No. 3 b.—Affidavit for the Commissioners of Inland Revenue.—For Administrators.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .
I, C. D., of [*insert the names, residences, titles or professions of the persons making the affidavit*], the party applying for letters of administration of the personal estate and effects of the said A. B., late of make oath [*or solemnly affirm*] and say as follows: That the said deceased died on or about the day of one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if any leaseholds insert clause No. 1* hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2† hereon endorsed*].

(Signed) C. D.
Sworn at on the day of before me
[*person authorized to administer oaths under the act*].

N.B.—Forms for the two leasehold clauses to be printed at the back of the affidavit.

* See note *, p. 324, ante.

† See note †, *ibid*.

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No. 4.—Oath for Executor.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereto annexed to contain the true and original last will and testament [or last will and testament with codicils] of A. B. late of in the county of deceased, and that I am the sole executor [or one of the executors] therein named [or executor according to the tenor thereof, executor during life, executrix during widowhood, or as the case may be], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [or will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship whenever required by law so to do; that the testator died at in the county of on the day of 18 and that he had at the time of his death a fixed place of abode at within the said district of and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [or our] knowledge, information and belief.

(Signed) C. D.
Sworn at this day of 18 before
me, E. F.

[Each testamentary paper to be marked by the persons sworn and the person administering the oath].

No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [or solemnly affirm], that I believe this paper writing [or these paper writings] hereunto annexed to contain the true and original last will and testament [or the last will and testament with codicils] of A. B., late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [or as the fact may be], and that I am the residuary legatee in trust

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named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [*or will and codicils*] by paying his just debts and the legacies contained in his will [*or will and codicils*]; and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 that the said testator at the time of his death had a fixed place of abode at within the said district of and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) C. D.
Sworn at this day of 18 before
me, E. F.

[*Each testamentary paper to be marked by the person sworn and the person administering the oath*].

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or solemnly affirm*], that A. B. late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 that at the time of his death he had a fixed place of abode at within the said district of and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.
Sworn at this day of 18 before
me, E. F.

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No. 7.—Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [*or the last will and testament with codicils*] hereunto annexed of A. B., late of deceased, who died on or about at and who at the time of his death had a fixed place of abode at within the said district of was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or will and codicils*] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[*To be written in the margin of Probate.*] Sworn under
£ and that the testator died on or about the day
of 18 .

No. 8.—Letters of Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at and who at the time of his death had a fixed place of abode at within the said district of made and duly executed his last will and testament and did therein name . And BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and

faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

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(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[To be written in margin of Administration will.] Sworn under £ and that the testator died on or about the day of 18 .

No. 9.—Letters of Administration.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 at intestate, and had at the time of his death a fixed place of abode at within the said district of were granted by her Majesty's Court of Probate to C. D., of the widow [or as the case may be] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[To be written in margin of Administration will.]* Sworn under £ and that the intestate died on or about the day of 18 .

No. 10.—Double Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [or the last will and testament with codicils] of A. B., late of deceased, who died on

* [So in the original.]

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or about at and had at the time of his death a fixed place of abode at within the said district of was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [or codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And BE IT FURTHER KNOWN, that on the * day of 18 the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed) G. H.,
District Registrar.
(L.S.)

Extracted by

[To be written in margin.] Sworn under £ and that
the testator died on or about the day of 18 .

No. 11.—Exemplification of Probate or Letters of Administration with Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it plainly appears that on the day of in the year of our Lord 18 the last will and testament with codicils of A. B., late of deceased, who died at on or about and had at the time of his death a fixed place of abode at within the said district of was proved by C. D., the executor named therein [or letters of administration, with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which

* In the margin.—“Former grant, Jan. 18 , under the same sum.”

probate [*or letters of administration now remain*] now remains of record in the said registry. The true tenor of the said probate [*or letters of administration with the will annexed, as the case may be*] is in the words following, to wit:
[Here the grant is to be recited verbatim].

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In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and
the sealing of these presents, this day of
in the year of our Lord 18 .

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[To be written in the margin]. Sworn under £ and
that the testator died on the day of 18 .

No. 12.—Exemplification of Administration.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about and had at the time of his death a fixed place of abode at within the said district of were granted to C. D., the [*or one of the*] of the said deceased, and which letters of administration now remain of record in the said registry. The true tenor of the said letters of administration is in the words following, to wit:

[Here the letters of administration are to be recited verbatim].

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search,
and sealing of these presents, this day of
in the year of our Lord 18 .

(Signed) K. L.,
District Registrar.
(L.S.)

Extracted by

[To be written in the margin]. Sworn under £ and
that the intestate died on the day of 18 .

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No. 13.—Special Administration with the Will of a Married Woman annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And BE IT ALSO KNOWN, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

Extracted by (Signed) J. S.,
District Registrar.
(L.S.)

[To be written in the margin.] Sworn under £100, and that the testatrix died on the day of 18 .

No. 13 a.—Limited Probate of a Married Woman's Will.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of

abode at within the said district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 and made between E. F., of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G., of in the county of spinster, of the second part, and H. I., of in the same county, gentleman, and the said C. B., of aforesaid, of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and

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and thereof appointed L. M. and O. P. executors.

And BE IT ALSO KNOWN, that on the day of 18 the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said district registry of attached to her Majesty's Court of Probate, and that probate of the said will of the said deceased limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
District Registrar.
(L.S.)

Extracted by

[To be written in the margin.] Sworn under £ and
that the testator died on the day of 18 .

No. 14.—Special Administration of the rest of the Goods of a Married Woman.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of and having during her

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coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 and made between D. E., of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 and thereof appointed E. F. and G. H. executors. And BE IT ALSO KNOWN, that on the day of 18 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and bath in and by her said will appointed or disposed of accordingly, but no further or otherwise was granted by authority of to the said E. F. and G. H., the executors named in the said will. And BE IT FURTHER KNOWN, that on the day of 18 letters of administration of the rest of the personal estate and effects of the said A. B. deceased, were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

(Signed) R. S.,

Extracted by

District Registrar.

(L.S.)

[To be inserted in the margin.] Sworn under £ and that the deceased died on the day of 18 .

No. 15.—Administration de Bonis non.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, died on or about 18 at intestate, and had at the time of his death a fixed place of abode at within the said district of and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed and granted to C. D. [insert the relationship or character of administrator] (which letters of administration now remain of record in the district registry of) who, after taking such administration upon him, intermeddled in

the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do.

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(Signed) E. F.,
District Registrar.
(L.S.)

[To be written in margin of Administration will.] Sworn
under £ and that the intestate died on the day of
18.

No. 16.—Administration Bond.

KNOW ALL MEN by these presents, that we, A. B. of
C. D. of and E. F. of are jointly and
severally bound unto G. H., the Judge of her Majesty's
Court of Probate, in the sum of pounds of good
and lawful money of Great Britain, to be paid to the said
G. H. or to the Judge of the said court for the time being,
for which payment well and truly to be made we bind
ourselves and of us for the whole, our heirs, exe-
cutors and administrators, firmly by these presents.
Sealed with our seals. Dated the day of
year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-
named A. B., the [as the case may be] of I. J., late of
deceased, who died on the day of do, when law-
fully called on in that behalf, make or cause to be made a
true and perfect inventory of all and singular the personal
estate and effects of the said deceased which have or shall
come to hands, possession or knowledge, or into the
hands and possession of any other person for and the
same so made do exhibit or cause to be exhibited into the
district registry of attached to her Majesty's Court of
Probate, whenever required by law so to do, and the same
personal estate and effects, and all other the personal estate
and effects of the said deceased at the time of death,
which at any time after shall come to the hands or possession
of the said or into the hands or possession of any
other person or persons for do well and truly administer
according to law; (that is to say,) do pay the debts which
did owe at decease, and further do make or cause

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to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under an Act of Parliament, intituled, "An Act for the better Settling of Intestate Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said Court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of

K. L., Commissioner,
M. N., District Registrar of ,
[or O. P., Clerk to the District
Registrar of].

No. 17.—Administration Bond for Administrators with the Will.

KNOW ALL MEN by these presents, that we, A. B., of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B., the [as the case may be] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the district registry of attached to her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer,

(that is to say,) do pay the debts of the said deceased which did owe at his death, and then the legacies contained in the said will annexed to the said letters of administration so to be committed, as far as the personal estate and effects will thereto extend, and the law charge and further do make or cause to be made a true and just account of the said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

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Signed, sealed and delivered in the presence of
K. L., Commissioner,
M. N., District Registrar of _____,
[or O. P., Clerk to the District Registrar of _____].

No. 18.—Declaration of the Personal Estate and Effects of a Testator or an Intestate.

A true declaration of all and singular the personal estate and effects of A. B., late of _____ deceased, who died on the _____ day of _____ at _____ and had at the time of his death a fixed place of abode at _____ within the district of _____ which have at any time since his death come to the hands, possession or knowledge of C. D., the administrator with the will of the said A. B. [or administrator, as the case may be], made and exhibited upon and by virtue of the corporal oath [or solemn affirmation] of the said C. D. as follows, to wit:

First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to _____ £ | s. | d.

[The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular].

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the _____ day of _____ 18 _____ the said C. D. was duly sworn to [or solemnly affirmed] the truth of the above inventory,

Before me,
[person authorized to administer oaths under the act].

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No. 19.—Justification of Sureties.

In her Majesty's Court of Probate. The District
Registry of .

In the goods of A. B., deceased.

The day of 18 .
We, C. D. of and E. F. of jointly
and severally make oath, that we are the proposed sureties on
behalf of G. H., the intended administrator of all and singular
the personal estate and effects of the said A. B., late of
deceased, in the penal sum of pounds, for his faithful ad-
ministration of the said personal estate and effects of the said
deceased ; and I the said C. D. for myself make oath, that
I am, after payment of all my just debts, well and truly worth
in money and effects the sum of ; and I the said E. F.
for myself make oath, that I am, after payment of all my just
debts, well and truly worth in money and effects the sum of
pounds.

Same day the said C. D. }
and E. F. were duly
sworn to the truth of this
affidavit. }

Before me,

[*person authorized to administer oaths under the act*].

No. 20.—Election by Minors of a Guardian.

In her Majesty's Court of Probate. The District
Registry of .

WHEREAS A. B., late of in the county of de-
ceased, died on about the day of 18 at
intestate, a widower, leaving C. D., E. F., and G. H. his
natural and lawful children and only next of kin, the said
C. D. being a minor of the age of twenty years only, the said
E. F. being also a minor of the age of nineteen years only,
and the said G. H. being an infant of the age of six years only :

Now we, the said C. D. and E. F., do hereby make choice
of and elect K. L., of in the county of our lawful
maternal uncle and one of our next of kin, to be our curator
or guardian, for the purpose of his obtaining letters of ad-
ministration of the personal estate and effects of the said
A. B., deceased, to be granted to him for our use and benefit,
and until one of us attain the age of twenty-one years [*or* for
the purpose of renouncing for us, and on our behalf all our
right, title and interest to and in the letters of administra-

tion, &c. [as the case may be] [add, in cases where a proctor, solicitor or attorney appears for the minors, and we hereby appoint M. N. of our proctor, solicitor or attorney, to file or cause to be filed this our election for us in the said district registry of attached to her Majesty's Court of Probate].

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IN WITNESS whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed and delivered in the presence of

[One disinterested witness sufficient].

No. 21.—Renunciation of Probate and Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at and had at the time of his death a fixed place of abode at within the said district of ; and whereas he made and duly executed his last will and testament bearing date the day of 18 [if there are codicils their dates should be also inserted], and thereof appointed C. D. executor and residuary legatee in trust [or as the case may be]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will, [and codicils, if any,] and to the letters of administration with the said will [and codicils, if any,] annexed, of the personal estate and effects of the said deceased [add in cases where a proctor, solicitor or attorney appears for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor or attorney, to file or cause to be filed this renunciation for me in the said district registry of attached to her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of

G. H.,

[One disinterested witness sufficient].

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No. 22.—Renunciation of Administration.

In her Majesty's Court of Probate. The District Registry of .*

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at intestate, a widower, and had at the time of his death a fixed place of abode at within the said district of ; and whereas I, C. D. of am his natural lawful child, and his only next of kin :

Now I, the said C. D. do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor or attorney appears for the person renouncing, and I hereby appoint E. F. of my proctor, solicitor or attorney, to file or cause this renunciation to be filed for me in the district registry of attached to her Majesty's Court of Probate*].

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of

G. H.

[*One disinterested witness sufficient*].

No. 23.—Subpœna in a Proceeding in Common Form to bring in a Script.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS it appears by a certain affidavit filed in the principal registry of our Court of Probate [*or filed in the district registry of attached to our Court of Probate*], bearing date the day of 18 and made by of that a certain original paper or script being or purporting to be testamentary, to wit [*here describe the paper*], bearing date the day of 18 is now in your possession or under your control :

* This to be varied according to the fact.

NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court [or the district registry of _____ attached to our said court] the said original paper now in the possession of you the said _____ or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court, [or the district registry of _____ attached to our said court,] an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script: and this you shall in nowise omit under the penalty of one hundred pounds. Witness [insert the name of the Judge], at the Court of Probate, the _____ day of _____ 18 _____ in the year of our reign.

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Indorsement to be made of the service.

This subpoena was served by G. H. on _____ of _____ on the _____ day of _____ 18 _____.

(Signed) G. H.

No. 24.—Affidavit of Handwriting.

In her Majesty's Court of Probate. The District Registry of _____.

I, A. B., of _____ in the county of _____ make oath [or solemnly affirm], that I knew and was well acquainted with C. D., late of _____ in the county of _____ deceased (who died on the _____ day of _____ at _____ and had at the time of his death a fixed place of abode at _____ within the said district of _____), for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus _____ ending thus _____ and being subscribed thus [include in these recitals the date of the will] "C. D." I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to

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be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation],

Before me,
E. F.

[person authorized to administer oaths under the act].

No. 25.—Affidavit of Plight and Condition and Finding.

In her Majesty's Court of Probate. The District Registry of .

I, A. B., of in the county of make oath [or solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of E. F., late of in the county of deceased (who died on the day of at and had at the time of his death a fixed place of abode at within the said district of) the said will bearing date the day of beginning thus ending thus and being subscribed thus "C. D.," and having viewed and perused the said will and particularly observed that [*here recite the finding of the will, and the various obliterations, interlineations, erasures and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit*]; I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found [*or as the case may be.*]

On the day of 18 the said A. B. and C. D. were duly sworn at to the truth of this affidavit [or made this solemn affirmation] before me

I. J.

[person authorized to administer oaths under the act].

No. 26.—Affidavit of Search.

In her Majesty's Court of Probate. The District Registry of .

I, A. B., of in the county of make oath [or solemnly affirm] that I am the sole executor named in the

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paper writing hereunto annexed, purporting to be and contain the last will and testament of C. D. late of deceased, (who died on the day of in the year 18 at and had at the time of his death a fixed place of abode at within the said district of) the said will beginning thus, " " ending thus, " In witness whereof " I have hereunto set my hand this day of in the "year of our Lord one thousand eight hundred and fifty-four," [or as the case may be], and being thus subscribed, "C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [or that the said will is without date, or as the case may be], I further make oath [or solemnly affirm], that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [or solemnly affirm], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever, other than the said will by me hereinbefore deposed of.

A. B.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [or made this solemn affirmation] before me,

G. H.

[person authorized to administer oaths under the act.]

[This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.]

No. 27.—Caveat.

In her Majesty's Court of Probate. The District Registry of .

Let nothing be done in the goods of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the said district of unknown to C. D. of having interest [or to E. F., of the proctor, solicitor or attorney of parties having interest].

Dated this day of 18 .

(Signed) C. D. of [or
E. F. of the proctor,
solicitor or attorney of parties having interest].

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No. 28.—Warning to Caveat.

In her Majesty's Court of Probate. The District Registry

To A. B. of [or to C. D. of proctor, solicitor or attorney of the parties having interest].

You are hereby WARNED, within six days* after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the day of 18 and had at the time of his death a fixed place of abode at within the said district of and to set forth your [or your client's] interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y.,
District Registrar.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [or on C. D. of the proctor, solicitor or attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.,

[or, The duplicate of this warning, signed by the said X. Y. was sent by the public post, directed to the said A. B. (or C. D.) by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.]

* These six days are to be exclusive of Sunday.



F E E S

TO BE TAKEN IN THE

DISTRICT REGISTRIES OF THE COURT OF PROBATE

IN

NON-CONTENTIOUS BUSINESS.

—◆—

Probates or Letters of Administration with Will
annexed.

For every probate when the personal estate is sworn to be £ s. d.
under 100*l.*, or any sum less than 100*l.* .. 0 1 0

For every probate when the personal estate is of the value of
100*l.* and under 4,000*l.*, or any sum less than 4,000*l.*, a fee
of 1*s.* 6*d.* in the pound on the amount of stamp duty payable
on such probate.

For every probate when the personal estate is of the value of
4,000*l.* and upwards, the following fees:—

If the personal estate is sworn to be—

Under the value of £5,000	..	..	..	4	15	0
6,000	..	..	..	5	0	0
7,000	..	..	..	5	5	0
8,000	..	..	..	5	10	0
9,000	..	..	..	5	15	0
10,000	..	..	..	6	0	0
12,000	..	..	..	6	5	0
14,000	..	..	..	6	10	0
16,000	..	..	..	6	17	6
18,000	..	..	..	7	5	0
20,000	..	..	..	7	12	6
25,000	..	..	..	8	2	6
30,000	..	..	..	8	15	0
35,000	..	..	..	9	7	6
40,000	..	..	..	10	6	3
45,000	..	..	..	11	5	0
50,000	..	..	..	12	3	9
60,000	..	..	..	13	2	6
70,000	..	..	..	15	0	0
80,000	..	..	..	16	17	6

R

Probates— <i>continued</i> .			£	s.	d.
Under the value of £90,000	..	..	18	15	0
100,000	..	..	20	12	6
120,000	..	..	21	11	3
140,000	..	..	23	8	9
160,000	..	..	25	6	3
180,000	..	..	27	3	9
200,000	..	..	29	1	3
250,000	..	..	30	18	9
300,000	..	..	35	12	6
350,000	..	..	40	6	3
400,000	..	..	41	17	6
500,000	..	..	43	8	9
600,000	..	..	46	6	3
700,000	..	..	49	13	9
800,000	..	..	52	16	3
900,000	..	..	55	18	9
1,000,000	..	..	59	1	3
Above 1,000,000	..	..	62	3	9
For registering and collating wills of three folios of ninety words each, or under	..	..	0	4	6
If above three folios of ninety words each, per folio	..	..	0	1	6
In cases of a grant for Queen's pay or prize money (the effects being under 100 <i>l.</i>) without reference to the length of the will	..	..	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or cessat probate of the will is four folios of ninety words each, or under, including parchment	..	..	0	6	0
If above four folios of ninety words each (including parchment), per folio	..	..	0	1	6
For every double or cessat probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.					
For every double or cessat probate, when the personal estate is of the value of 450 <i>l.</i> , or upwards	..	..	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first probate.					
For every duplicate and triplicate probate, when the personal estate is of the value of 450 <i>l.</i> or upwards	..	..	0	12	6
For engrossing, exemplifying and collating a will of four folios of ninety words each, or under, including parchment	..	..	0	6	0
If above four folios of ninety words each, per folio (including parchment)	..	..	0	1	6
For every exemplification of probate	..	..	1	1	0

Letters of Administration.

For every grant of letters of administration when the personal £ s. d.
estate is sworn to be under 100*l.*, or any sum less than
100*l.*, a fee of 0 1 0

For every grant of letters of administration when the personal
estate is of the value of 100*l.* and under 2,000*l.*, or any sum
less than 2,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount
of stamp duty payable on such letters of administration.

For every grant of letters of administration when the personal
estate is of the value of 2,000*l.* and upwards, the following
fees:—

If the personal estate is sworn to be—

Under the value of £3,000	..	..	..	4	13	9
4,000	..	..	..	4	17	6
5,000	..	..	..	5	5	0
6,000	..	..	..	5	12	6
7,000	..	..	..	6	0	0
8,000	..	..	..	6	7	6
9,000	..	..	..	6	15	0
10,000	..	..	..	7	2	6
12,000	..	..	..	7	10	0
14,000	..	..	..	7	17	6
16,000	..	..	..	8	8	9
18,000	..	..	..	9	0	0
20,000	..	..	..	9	11	3
25,000	..	..	..	9	16	3
30,000	..	..	..	11	5	0
35,000	..	..	..	12	3	9
40,000	..	..	..	13	11	3
45,000	..	..	..	15	0	0
50,000	..	..	..	16	7	6
60,000	..	..	..	17	16	3
70,000	..	..	..	20	12	6
80,000	..	..	..	23	8	9
90,000	..	..	..	26	5	0
100,000	..	..	..	29	1	3
120,000	..	..	..	30	9	6
140,000	..	..	..	33	5	9
160,000	..	..	..	36	2	0
180,000	..	..	..	38	18	3
200,000	..	..	..	41	14	6
250,000	..	..	..	44	10	9
300,000	..	..	..	46	17	6
350,000	..	..	..	49	4	6
400,000	..	..	..	51	11	3
500,000	..	..	..	53	18	3
600,000	..	..	..	58	12	0

Letters of Administration— <i>continued.</i>			£	s.	d.
Under the value of £700,000	..	..	63	5	9
800,000	..	..	67	19	6
900,000	..	..	72	13	3
1,000,000	..	..	77	7	0
Above 1,000,000	..	..	82	0	9
For every duplicate and triplicate letters of administration when the personal estate is under 300 <i>l.</i> , or any sum less than 300 <i>l.</i> , the same fee as on the first grant of letters of administration.					
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300 <i>l.</i> and upwards					
	..	..	0	12	6
For every exemplification of letters of administration	..		1	1	0
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is under 450 <i>l.</i> or any smaller sum, the same fee as on the first grant.					
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450 <i>l.</i> and upwards					
	..	..	0	12	6
For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under (including parchment).. .. .					
	..	..	0	6	0
If above four folios of ninety words each, per folio, including parchment					
	..	..	0	1	6
For every grant of letters of administration de bonis non or cessate, if the personal estate is under 300 <i>l.</i> or any smaller sum, the same fee as on the first grant.					
For every grant of letters of administration de bonis non or cessate, if the personal estate is of the value of 300 <i>l.</i> and upwards					
	..	..	0	12	6
For every special or limited grant of probate or letters of administration with or without the will annexed, in addition to the ordinary fees as under:—					
If the personal estate is under the value of 20 <i>l.</i> , 1 <i>s.</i> per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.					
If the personal estate is of the value of 20 <i>l.</i> and upwards, 2 <i>s.</i> per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.					
For articles entered into by administrators to pay creditors pro rata, per folio of ninety words each					
	..	..	0	2	0
For the bond for the performance of the articles, per folio of ninety words					
	..	..	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act that additional security has been given					
	..	..	0	5	0

Letters of Administration— <i>continued.</i>	£	s.	d.
For every certificate that additional security has been given..	0	1	0
For every search for will or grant of letters of administration or any other document filed in the district registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered, in addition to the search	0	1	0
For looking up and producing any document filed in the district registry, other than an original will or administration act..	0	1	0
For every office copy or extract of a record, will, or probate or administration act or other document filed in the district registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
If the will or other document is 200 years old, and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, per folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6
If exceeding five folios of ninety words, per folio	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under..	0	5	0
If exceeding twenty folios, every additional two folios	0	0	3
If a copy is required to be printed, for every eight folios of ninety words, in addition to a manuscript copy for the printer at 6d. per folio of ninety words	0	5	0
For every attendance with any book or original document within three miles of the district registry	1	1	0
For second and each subsequent attendance at the same place, and with the same document if within fourteen days	0	10	6
For each day's attendance with any book or original document at any place beyond the distance of three miles from the district registry, exclusive of travelling expenses	1	1	0
For every receipt for a document or documents delivered out of the district registry	0	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the principal registry or any other district registry	0	1	0
For every warning to a caveat issuing from the district registry	0	5	0
For messenger's attendance with warning to caveat within three miles of the district registry	0	2	6
For every notice of application for a grant of probate or administration transmitted to registrars of the principal registry	0	1	0

Letters of Administration— <i>continued</i> .	£	s.	d.
For filing each of such notices in the principal registry ..	0	0	6
For every search by the district registrar in order to ascertain whether any probate or grant of letters of administration has already issued as under :—			
For every year after the year in which the deceased died	0	0	6
And for every such search in the principal registry after the year in which the deceased died, a further fee of ..	0	0	6
For the certificate of the registrar of the principal registry, that no application has been made in respect of the goods of the deceased	0	1	0
For filing affidavit for the Inland Revenue Office on granting probate or letters of administration for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in the district registry, except the oaths for executors, or administrators, or administrators with will, the first administration bond, and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For every receipt for documents left in the district registry in order to obtain the grant of probate or letters of administration with or without will annexed	0	1	0
For depositing every will of a person deceased in the district registry, for safe custody	0	10	0
For every oath administered by the district registrars ..	0	1	0



FEES

*To be taken FOR THEIR OWN USE by Proctors, Solicitors
and Attornies practising in the Court of Probate
and in the District Registries thereof, in*

NON-CONTENTIOUS BUSINESS.

Fees of Probates.

Effects sworn under	Oath of Executors and attend- ance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engross- ing and collating the Will, three folios of ninety words or under.†	Probate under seal	Extract- ing.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6

† If more than 3 folios, 1s. 6d. per folio.

Fees of Probates—continued.

Effects sworn under	Oath of Executors and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under.†	Probate under seal.	Extracting.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7 6
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7 6
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7 6
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7 6
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1 0
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0
100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 8 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0
600,000	10 0	10 0	4 6	46 6 3	13 4	1 1 0
700,000	10 0	10 0	4 6	49 13 9	13 4	1 1 0
800,000	10 0	10 0	4 6	52 16 3	13 4	1 1 0
900,000	10 0	10 0	4 6	55 18 9	13 4	1 1 0
1,000,000	10 0	10 0	4 6	59 1 3	13 4	1 1 0
Above that sum }	10 0	10 0	4 6	62 3 9	13 4	1 1 0

† If more than 3 folios, 1s. 6d. per folio.

Fees of Letters of Administration with Will annexed.

In addition to the above fees for attendance on execution of the bond if the effects are—

					<i>s.</i>	<i>d.</i>
5 <i>l.</i> and under 20 <i>l.</i>	..	..	..	..	0	10
20 <i>l.</i> and under 100 <i>l.</i>	..	..	..	..	1	8
100 <i>l.</i> and upwards	..	..	..	..	3	4

Fees of Letters of Administration.

Effects sworn under	Oath of Ad- ministrator and attend- ance on his being sworn, and on execution of the Bond.	Affidavit for Inland Re- venue and attendance on Adminis- trator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	<i>s.</i>	<i>d.</i>	£	<i>s.</i>	<i>d.</i>
5	2	6	0	1	0
20	3	4	0	1	0
50	5	0	0	1	6
100	6	8	0	3	0
200	10	0	0	4	6
300	13	4	0	12	0
450	13	4	0	16	6
600	13	4	1	2	6
800	13	4	1	13	0
1,000	13	4	2	5	0
1,500	13	4	3	7	6
2,000	13	4	4	10	0
3,000	13	4	4	13	9
4,000	13	4	4	17	6
5,000	13	4	5	5	0
6,000	13	4	5	12	6
7,000	13	4	6	0	0
8,000	13	4	6	7	6
9,000	13	4	6	15	0
10,000	13	4	7	2	6
12,000	13	4	7	10	0
14,000	13	4	7	17	6
16,000	13	4	8	8	9

Fees of Letters of Administration—*continued*.

Effects sworn under	Oath of Ad- ministrator and attend- ance on his being sworn, and on execution of the Bond.	Affidavit for Inland Re- venue and attendance on Adminis- trator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	9 16 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0
600,000	13 4	10 0	58 12 0	13 4	1 1 0
700,000	13 4	10 0	63 5 9	13 4	1 1 0
800,000	13 4	10 0	67 19 6	13 4	1 1 0
900,000	13 4	10 0	72 13 3	13 4	1 1 0
1,000,000	13 4	10 0	77 7 0	13 4	1 1 0
Above thatsum }	13 4	10 0	82 0 9	13 4	1 1 0

Fees of Double or Cessate Probates.

If the effects are sworn under	Attendance in the Registry and looking up the Will and bespeaking the engrossment.	Oath of the executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double Probate under seal.	Extracting.	Clerk.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	1 0	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
Above 5,000		10 0	10 0	10 0	13 4	12 6	13 4	7 6

The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards is 1*l.* 1*s.*

Exemplification of Probate or Letters of Administration with or without Will annexed.

						£	s.	d.
Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	..	..	..	..	..	0	6	8
Exemplification under seal and stamp	..	..	..	..	..	1	1	0
Extracting	..	..	..	..	..	0	6	8
Clerks	..	..	..	..	..	0	2	6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

						£	s.	d.
Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	..	..	..	..	..	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	..	..	..	..	..	0	10	0
Attending at the Inland Revenue Office and procuring the duty-paid stamp	..	..	..	..	..	0	13	4

Duplicate or triplicate probate or letters of administration,
with or without the will annexed,

If the personal estate is under 450*l.*, or any smaller sum,
the same fee as on the first grant.

If the personal estate is of the value of 450 <i>l.</i> and upwards						0	12	6
Extracting	..	..	..	..	..	0	6	8
Clerks	..	..	..	..	..	0	2	6

Letters of Administration with or without Will annexed de Bonis non or Cessate.

If the effects are sworn under	Attending in the Registry, looking up the Will, and taking an account of the former Grant.	Oath of the administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis administration with Will under seal and duty-paid Stamp.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450								

The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*

Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn :—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar, per folio of seventy-two words	0	0	4
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8
Engrossing and collating the will, three folios of ninety words or under	The same fees as on ordinary probates.		
Special or limited probate, under seal			
Extracting			
Clerk			

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn :—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration, under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

For attendance in the registry for searching for a record, will or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, <i>including</i> the ordering of a copy	£	s.	d.
For every five years after the first five years	0	5	0
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	3	4
For collating an office copy or extract of a record, will or other document, with the original, including extracting fee, per folio of ninety words	0	0	4
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	0	2
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0

Caveats.

For attendance in the registry and entering caveat	£	s.	d.
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8
	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

For taking instructions for every affidavit or declaration of personal estate and effects	£	s.	d.
For drawing and fair copy of the same, per folio of seventy-two words	0	6	8
For every copy thereof, per folio of seventy-two words	0	1	0
	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents prepared by Proctors, Solicitors or Attorneys.

For drawing and fair copy of every instrument of renunciation,			
consent, letter of attorney, or other document prepared as			
	£	s.	d.
above, per folio of seventy-two words	0	1	0
For every fair copy, per folio of seventy-two words ..	0	0	4



RULES AND ORDERS

For her Majesty's Court of Probate, made under the provisions of the "Act to amend the Law relating to Probates and Letters of Administration in England" (20 & 21 Vict. c. 77), in respect of

CONTENTIOUS BUSINESS (SECT. 30).



1. All proceedings in the Court of Probate or in the registries thereof in respect of business not included in the act itself under the expression "common form business," except the warning of caveats, shall be deemed to be CONTENTIOUS BUSINESS.

2. Executors or other parties who, previously to the passing of the act, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect, as heretofore.

3. Next of kin and others who, previous to the passing of the act, had a right to put executors or other parties entitled to administration with the will annexed upon proof of the will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs as heretofore.

4. Parties who previously to the passing of the act had a right to intervene in the cause shall continue to possess the same right, subject to the same limitations and the same rules with respect to costs as heretofore.

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Business.

5. A caveat shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time as heretofore. A caveat shall be warned at the place mentioned in it as the address of the person who entered it. It shall be sufficient for the warning of a caveat that one of the registrars send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

6. Upon a party appearing in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence.

7. Where a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the Forms Nos. 3, 5, or in some similar form.

8. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4. Before a party can proceed after the service of a citation, an appearance must have been previously entered by or on behalf of the party cited, or an affidavit of personal service must have been filed in the registry, or the order of the Judge, founded on an affidavit, and giving leave to proceed, must have been obtained, and filed in the registry.

9. Every citation shall be written or printed on parchment, and the party taking out the same, or his proctor, solicitor or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 6, to the registry, and there deposit the præcipe and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office. Personal service of any citation shall be effected by leaving a copy

of the citation with the party cited, and showing him the original, if required by him so to do. Contentious Business.

10. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office.

11. It shall be sufficient to leave all pleadings and other proceedings not expressly requiring personal service under these rules and orders at the address furnished so as aforesaid by plaintiff and defendant respectively.

12. In case the party cited does not appear within the time limited in the citation, the plaintiff shall allege the default of appearance on the record, and the cause shall thereupon proceed in default.

13. The form to be used in entering an appearance is given, No. 7.

14. In case of proving a will in solemn form of law, the plaintiff shall declare in the Forms Nos. 8 and 9, or as near thereto as the circumstances of the case admit; and such declaration shall be delivered to the defendant, and a copy thereof filed in the registry upon one and the same day.

15. The declaration may be delivered to the defendant at any time after the defendant has entered an appearance. If the plaintiff do not deliver his declaration within one month after an appearance has been given, the defendant may apply to the Judge in chambers to fix a time within which such declaration shall be delivered.

16. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

17. The defendant, if desirous of pleading, must deliver his plea to the plaintiff within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except

Contentious Business. with the permission of the Judge. Forms of pleas are given, Nos. 10 and 11.

18. If the plaintiff propound a will, and the defendant in his plea allege the existence of a will of later date, the plaintiff, as well as the defendant, may, with and subject to the permission of the Judge, adduce proof on the trial of the validity of the will upon which he relies.

19. In testamentary causes, the several scripts of the testator, that is to say, wills, codicils, drafts of wills or codicils, or written instructions for the same, shall continue to be brought into the registry as heretofore. And for this purpose, every plaintiff shall at the time of filing the copy of his declaration in the registry file therewith an affidavit of scripts to the effect of Form No. 12; and in like manner the defendant, upon filing the copy of his plea, shall file therewith a similar affidavit. The time for the filing of these affidavits of scripts may be varied by order of the Judge, on the application of either party. Every script coming within the terms of the affidavit, and of which the deponent has any knowledge, is to be specified therein, and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.

20. Either of the parties may give in such further pleading as he may be advised. If either party desire to amend his pleadings, he may do so by permission of the Judge, and in such form and under such terms as the Judge may approve. The form of the declaration and plea will, it is presumed, be a sufficient guide to practitioners as to the form of any further pleadings.

21. If the defendant or plaintiff shall be of opinion that the declaration or plea or subsequent pleading does not disclose sufficient to enable him to proceed with safety, he may apply to the Judge to order the pleadings to be amended; and, if

necessary, further application may be made to the Judge thereon.*

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22. Within eight days after the delivery of the last pleading in the cause, the plaintiff is to deliver to the defendant the issue in the Form No. 13, or in a form as near thereto as the circumstances of the case will admit.

23. The plaintiff, after delivery of the issue, shall give notice to the defendant, that, after the expiration of eight clear days, he intends to apply to the court to try the question at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if the plaintiff do not give such notice within sixteen days from the day on which the issue was delivered the defendant may give a similar notice to the plaintiff. A form of notice, No. 14, is subjoined.

24. A copy of every such notice shall be filed in the registry upon the day on which the same is served upon the opposite party in the cause.

25. In each case the Judge shall direct, and, if necessary, after hearing the parties, in what mode the cause shall be tried.

26. After the direction of the Judge has been obtained as to the mode in which the cause is to be heard, the plaintiff shall, within four clear days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the Judge has directed the cause to be tried, as in the Form No. 15.

27. The plaintiff shall, on the day upon which he sets down the cause as ready for trial, give notice to each party for whom an appearance has been entered of his having done so; and if he delay setting down the cause as ready for trial for the space of one month after the court has directed the mode in which the question at issue shall be tried, the defendant may set the cause down as ready for

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Business.

trial, and give a similar notice to the plaintiff and the aforesaid other parties. A copy of every such notice shall be filed in the registry; and the cause, excepting the Judge shall otherwise direct, shall come on in its turn.

28. In default of the appearance of the party cited, a record, in Form No. 16, or as near thereto as can be, shall be filed in the registry.

29. Every subpoena shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his solicitor or attorney, shall take it, together with a præcipe, (forms of which are given, marked 17, 18, 19 and 20,) to the registry, and there get it signed and sealed, and there deposit the præcipe.

30. Either the plaintiff or defendant may call upon the other party, by notice in writing in the form annexed, No. 21, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be given except in cases where the omission to give the notice is, in the opinion of the registrar, a saving of expense.

31. Applications for the production of instruments purporting to be testamentary, and shown to be in the possession or under the control of any person or persons, as mentioned in the 26th section of the act, may be made to the Judge, on motion or petition, or by summons served on the opposite party in any suit, and upon motion and affidavit in cases where no suit is pending. Forms of subpoenas applicable to these cases are given, Nos. 22, 23, 24 and 25.

32. The hearing of the case shall be conducted

in court, and the counsel shall address the court, subject to the same rules and regulations as now obtain in the courts of common law. Contentious Business.

33. After the conclusion of the trial, the registrar shall enter on the record the finding of the jury, or the decision of the Judge, in a form corresponding as near as may be with that given, Nos. 26 and 27, and shall sign the same.

34. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the Judge for an order authorizing him to cite the heir or heirs at law or other person or persons pretending interest in such real estate; and the Judge, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, shall make an order authorizing the person applying to cite the heir or heirs at law or other such person or persons as aforesaid: provided always, that the Judge may make any special directions as to the persons to be cited which he may think the justice of the case requires.

35. An application for a new trial may be made to the Court of Probate in respect of causes tried before a jury within ten days from the day on which the cause was tried, or on the first sitting of the court after the cause has been tried.

36. An application for a rehearing of any case tried before the Judge without a jury, and in which evidence is given *vivâ voce*, may be made within ten days from the day on which the same was heard, or at the first sitting of the court after the cause has been heard.

37. If the plaintiff or defendant in any cause, unless by leave of the Judge previously obtained, fail to deliver the declaration, plea or other pleading within the time specified in these rules, the other party in the cause shall not be compelled to receive the same, unless by direction of the Judge. The

Contentious Business. expense of every such application to the Judge shall fall on the party who has caused the delay.

38. Citations, notices, and other processes heretofore in use and still retained, are to be inserted in the London Gazette, and in such of the leading morning and evening papers, and such local papers as the Judge may from time to time direct, instead of being served on the Royal Exchange.

39. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in court, unless by leave of the Judge.

40. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be used, unless by order of the Judge. The form of inventory is given, No. 28.

41. All notices required by these rules, or by the practice of the court, are to be in writing.

Interest Causes.

42. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their interest respectively.

43. In interest causes the pleading of each party must show on the face of it that no other person exists having an interest superior to that of the claimant.

44. Forms of the declaration and plea in an interest cause are given, No. 9 and No. 11.

Proceedings by Petition.

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Business.

45. In proceedings by petition the plaintiff shall, within four clear days after an appearance has been entered for the defendant, or, when the defendant is already before the court, within four clear days from the day upon which he claims to be heard by petition, deliver his act to the defendant, and file a copy thereof in the registry upon one and the same day.

46. The defendant shall, within eight days after the delivery of the act, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day.

47. The same course shall be pursued until the petition is concluded.

48. Both plaintiff and defendant shall, within eight clear days from the day upon which the petition is concluded, file in the registry such affidavits as may be necessary in support of their several averments therein. A form of petition is given, No. 29.

Appeals.

49. No petition of appeal shall be lodged against any sentence of the Court of Probate, unless within a month of the delivery of the sentence appealed from, or within such other time as the Judge shall direct, and unless notice of such appeal has been given to the opposite party in the cause, and filed in the registry.

50. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any such notice of appeal, unless the Judge shall otherwise order.

51. After notice of appeal has been given, the

Contentious
Business. Judge of the Court of Probate may order the execution of his decree to be suspended, upon such terms as he sees fit.

52. The Judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.



*FORMS which are to be followed as nearly as
the circumstances of each Case will allow.*

No. 1.—Caveat.

**Contentious
Business.**

In her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B., late of
deceased, who died on the day of 18 at
unknown to C. D. of having interest [or to E. F.,
proctor, solicitor or attorney of parties having interest].

Dated this day of 18 .
(Signed) C. D. of [or E. F. of
the proctor, solicitor or attorney
of parties having interest].

No. 2.—Warning to Caveat.

In her Majesty's Court of Probate. The Principal Registry.

To A. B. of [or to C. D. of proctor, solicitor
or attorney of parties having interest].

You are hereby WARNED, within six days after the service
of this warning upon you, inclusive of the day of such ser-
vice, to cause an appearance to be entered for you in the
principal registry of the Court of Probate to the caveat
entered by you in the goods of E. F., late of deceased,
who died at on the day of 18 and to set
forth your [or your client's] interest; and take notice that in
default of your so doing the said court will proceed to do all
such acts, matters and things as shall be needful and neces-
sary to be done in and about the premises.

(Signed) X. Y., one of the registrars of her
Majesty's Court of Probate.

Indorsement to be made after service.

This warning was served by I. K. on A. B. [or C. D.] fo
the person named in the caveat entered in respect fo

Contentious Business. the goods of the said deceased at on the day of
18 .

(Signed) I. K.,

[or, The duplicate of this warning, signed by the said X. Y.,
was sent by the public post directed to the said A. B. [or
C. D.] at on the day of 18 .]

(Signed) I. K.

No. 3.—Citation.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom
of Great Britain and Ireland Queen, Defender of the
Faith.

To of in the county of .

Whereas A. B. of claiming to be the executor of
C. D., late of deceased, who died on or about the
day of 18 at intends to prove in solemn form of law
as well the alleged last will and testament of the said deceased
bearing date the day of as also the [*first*] codicil
thereto, bearing date the day of [*and so on for any
other codicils*]: NOW THIS IS TO COMMAND YOU, that within
eight days after service hereof on you, inclusive of the day
of such service, you do cause an appearance to be entered
for you in our Court of Probate in support of any interest you
may have in the estate and effects of the said deceased: AND
TAKE NOTICE, that in default of your so doing the Judge of
our said court will proceed to hear the said will [*and codicils*]
proved in solemn form of law, and to pronounce sentence in
regard to the validity of the same, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on the within-named
of at on the day of 18 .

(Signed) G. H.

No. 4.—Citation to see Proceedings.

Contentious
Business.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom
of Great Britain and Ireland Queen, Defender of the
Faith.

To of in the county of .

Whereas there is now depending in our Court of Probate
a cause entitled A. B. v. C. D., wherein the said A. B. is pro-
ceeding to prove in solemn form of law the alleged last will
and testament with codicils, of E. F., late of de-
ceased, who died on or about the day of at :

And whereas it has been alleged that you are one of the
next of kin [*or interested under a former will of the deceased,*
or that you are a party entitled in distribution to the personal
estate and effects of the deceased, or as the case may be]:
THIS IS TO GIVE YOU NOTICE to appear in the said cause,
either personally or by your proctor, solicitor or attorney,
should you think it for your interest so to do, at any time
during the dependence of the said cause, and before final
judgment shall be given therein: AND TAKE NOTICE, that in
default of your so doing the Judge of our Court of Probate
will proceed to hear the said will [and codicils] proved in
solemn form of law, and pronounce judgment in the said cause,
your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on of at
on the day of 18 .

(Signed) G. H.

No. 5.—Citation to bring in Probate.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom
of Great Britain and Ireland Queen, Defender of the
Faith.

To of in the county of .

Whereas probate of the last will and testament [with
codicils] of A. B., late of deceased, was on or about the
day of 18 granted to you by our Court of
Probate: and whereas C. D., one of the natural and lawful

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brothers and next of kin [*or interested under a former will, or a party interested in distribution in the goods*] of the said deceased, hath alleged that the said probate ought to be called in, revoked and declared null and void in law: NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court the aforesaid probate, and further do show cause (if you should think it for your interest so to do) why the same should not be revoked, and the said will [*and codicils*] pronounced to be null and invalid.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on the within-named
of at on the day of 18 .
(Signed) G. H.

No. 6.—Præcipe for Citation.

In her Majesty's Court of Probate.

Citation [*or citation to see proceedings*] for A. B. of
against C. D., in a matter of proving in solemn form of law
the last will and testament with codicils of E. F., late
of in the county of, &c., deceased [*or generally describ-
ing the nature of the suit*].

P. A., proctor, solicitor or attorney
for [*or A. B. in person*].

The day of 18 .

No. 7.—Entry of an Appearance.

In her Majesty's Court of Probate.

A. B. Plaintiff, against C. D.,	}	The Defendant C. D. appears
<i>or</i>		in person, <i>or</i> E. F., proctor,
Against C. D. and another,		solicitor <i>or</i> attorney for C.
<i>or</i>		D., appears for the Defend-
Against C. D. and others.		ant.

[*Here insert the address required by rule No. 9.*]

Entered the day of 18 .

No. 8.—Declaration.

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Business.

In her Majesty's Court of Probate.

The day of 18 .

A. B. by C. D., his proctor, solicitor or attorney, says, that E. F., late of deceased, who died on or about the day of at made his last will and testament, with codicils, bearing date, to wit, the said will on the day of 18 the said first codicil on the day of 18 [and so on for any other codicils,] and in the said will appointed the said A. B. sole executor [or as the case may be]; that the said will and codicils respectively, after having been reduced into writing, were signed by the said testator in the presence of two witnesses present at the same time, and who subscribed the same in the presence of the said testator, and whose names severally appear upon the said will and codicils; and that the said testator was at the time of the execution of the said will and codicils respectively of perfect sound mind, memory and understanding.

(Notice where the Defendant appears).

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain probate of the said will [and codicils].

No. 9.—Declaration in an Interest Cause.

In her Majesty's Court of Probate.

The day of 18 .

A. B. [or A. B. by C. D., his proctor, solicitor or attorney,] saith, that E. F., late of deceased, died on or about the day of 18 at intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, leaving the said A. B. his lawful cousin-german and one of his next of kin [or as the case may be].

(Notice.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain letters of administration to the personal estate and effects of the said deceased.

No. 10.—Plea.

In her Majesty's Court of Probate.

Contention
Business.

The day of 18 .

G. H. [*or G. H. by I. Z., his proctor, solicitor or attorney,*] saith, that the paper writing bearing date the day of 18 and alleged by the plaintiff to be the last will and testament of A. B., late of in the county of deceased [*or the first or any other codicil thereto*], was not executed according to the provisions of 1 Vict. cap. 26, [*or that the deceased at the time the said alleged will or alleged codicil bears date, to wit, on the day of 18 was not of sound mind, memory and understanding*], [*or any other averment in accordance with the circumstances of the case*].

No. 11.—Plea in an Interest Cause.

In her Majesty's Court of Probate.

The day of 18 .

G. H. [*or G. H. by I. K., his proctor, solicitor or attorney,*] saith, that A. B., the plaintiff, is not the lawful cousin german of E. F., who died on or about the day of 18 at the deceased in this cause. And further, that the said deceased died intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, or cousin german, leaving him the said G. H. his lawful cousin german once removed, and his only next of kin [*or as the case may be*].

No. 12.—Affidavit of Scripts.

In her Majesty's Court of Probate.

A. B. v. C. D.

I, { $\begin{smallmatrix} A. B. \\ C. D. \end{smallmatrix}$ } of in the county of party in

this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of in the county of deceased, the deceased in this cause, has at any time, either before or since his death, come to the hands, possession or knowledge of me, this deponent, save and except the true and original last will

and testament of the said deceased now remaining in the registry of this court, the said will bearing date the day of 18 [or as the case may be], also save and except [here add any other testamentary papers of which the deponent has any knowledge].

Contentious
Business.

(Signed) A. B.

Sworn before me

[person authorized to administer oaths under the act].

N.B.—All papers answering the description in the affidavit which are in the possession or under the control of the party making the affidavit should be particularly described therein, and, if possible, brought into the registry annexed thereto.

No. 13.—The Issue.

In her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by P. Q., his proctor, solicitor or attorney [or in person,] did deliver, to wit, on the day of 18 to the said C. D., his declaration in the words and figures following:

[Here insert declaration at length].

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea, in the words and figures following:

[Here insert plea at length].

[Add any further pleadings].

Therefore the plaintiff claimed that the cause should be tried as the court shall direct.

No. 14.—Notice as to Mode of Trial.

In her Majesty's Court of Probate.

A. B. v. C. D.

To of .

Take notice, that after the expiration of eight clear days from the service hereof the { plaintiff } in this cause intends to apply to the court to try the question at issue before { defendant }

Contentious Business. itself [or by a common or special jury before itself], [or to direct an issue to be tried before the Judge of assize by a special or common jury at the next assizes to be holden in and for the county of], [or as the case may be].
Dated this day of 18 .

(Signed { A. B. }
 { C. D. })

or E. F. proctor, solicitor or attorney
for { A. B. }
 { C. D. }

No. 15.—Form of Record.

In her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor or attorney, [or in person,] having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of deceased, who died on or about the day of 18 at the said C. D. appeared thereto personally [or by his proctor, solicitor or attorney]: Whereupon A. B., to wit, on the day of 18 did deliver his declaration to the said C. D., in the words and figures following:

[Here insert declaration at full length].

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea in the words and figures following:

[Here insert plea at length].

[Add any further pleadings].

Whereupon the Judge did order, as follows:

[Here set forth the order verbatim].

No. 16.—Form of Record in case of Party cited not appearing.

In her Majesty's Court of Probate.

The day of 18 .

A. B. v. C. D.

A. B., by F. F., his proctor, solicitor or attorney, [or in person,] having cited C. D. to appear in support of any

interest he may have in the estate and effects of G. H. [or according to the terms of the citation], late of deceased, who died on or about the day of 18 at the said C. D. did not appear personally [or by his proctor, solicitor or attorney]: Whereupon, in default of the appearance of the said E. F., A. B. did file his declaration in the registry in the words and figures following:
[Here insert declaration at full length].

Therefore A. B. claimed that the cause should be tried as the Court shall direct:

Whereupon the Judge did direct the said cause to be heard before himself [or as the case may be].

No. 17.—Form of Subpœna ad testificandum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [names of all witnesses included in the subpœna], Greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [insert the name of the Judge], Judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is tried, to testify the truth according to your knowledge in a certain cause now in our court before our said Judge depending, between plaintiff and defendant [or in a certain cause or proceeding now in our court before our said judge depending, in default of the appearance of parties cited, entitled], on the part of the [plaintiff or defendant, or as the case may be], and at the aforesaid day, between the parties aforesaid, to be tried [or in default aforesaid, between the parties aforesaid, to be tried]; and this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [insert the name of the Judge], at the Court of Probate, the day of in the year of our reign.

(Signed)

No. 18.—Subpœna duces tecum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to

Contentious Business. [*names of all parties included in the subpoena*], Greeting. We command you and every of you, that, all other things set aside, and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the Judge*], Judge of our Court of Probate, at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you, and produce at the time and place aforesaid [*here describe shortly the deeds, letters, papers, &c. required to be produced*], then and there to testify and show all and singular those things which you or either of you know or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said court before our said Judge depending, between plaintiff and defendant, [or a certain cause or proceeding now in our said court before our said Judge depending, in default of the appearance of parties cited, and entitled] on the part of the [*plaintiff or defendant, or as the case may be*], and at the aforesaid day between the parties aforesaid to be tried. And this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the Judge*], at the Court of Probate, the day of in the year of our reign.

(Signed) E. F., Registrar.

No. 19.—Præcipe for Subpœna ad testificandum.

In her Majesty's Court of Probate.

Subpœna of W. W., T. W., S. W., G. W., and F. W., to testify between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*]
 { C. D. } proctor, solicitor or attorney.

No. 20.—Præcipe for Subpœna duces tecum.

In her Majesty's Court of Probate.

Subpœna for W. W. to testify and produce, &c. between A. B. plaintiff, and C. D. defendant, on the part of the plaintiff [*or defendant*], the day of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*]
 { C. D. } proctor, solicitor or attorney.

No. 21.—Notice to admit Documents.

Contentious
Business.

In her Majesty's Court of Probate.

A. B. v. C. D.

Take notice, that the { plaintiff / defendant } in this cause proposes to adduce in evidence the several documents hereunto specified, and that the same may be inspected by the { defendant / plaintiff } at on between the hours of and the { defendant / plaintiff } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To { A. B. / C. D. } or to E. F., attorney or solicitor { defendant / plaintiff } or agent for

(Signed) { C. D. / A. B. } or G. H., attorney or solicitor { plaintiff / defendant } or agent for

[Here describe the documents. The same form may be employed in describing the documents as is now in use in the Common Law Courts].

No. 22.—Subpœna to bring in a Script in a Cause.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS there is now proceeding in our Court of Probate a certain business of proving in solemn form of law the last will and testament of A. B. late of deceased, who died on or about at the said will bearing date the day of 18 promoted by C. D., the sole executor [or as the case may be] therein named, against E. F., the natural and lawful brother and one of the next of kin of the said deceased [or as the case may be]: And whereas it appears by a certain affidavit of the said C. D. made in the said cause, bearing date the day of 18 and now

Indorsement to be made after Service.

Contentious
Business.

This citation was served by I. K. on the within-named
on the day of 18 .

(Signed) I. K.

No. 24.—Præcipe for a Witness to bring in a Script.

In her Majesty's Court of Probate.

Subpœna for W. W. to bring into and leave in the registry,
[*Here accurately describe the script*].

The day of of 18 .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*]
 { C. D. } proctor, solicitor or attorney.

No. 25.—Præcipe for a Witness to be examined touching a Testamentary Paper, of which he is supposed to have knowledge.

In her Majesty's Court of Probate.

Subpœna for W. W. to testify respecting of a paper writing
or script purporting to be testamentary, to wit, [*describing it,*]
of which he has knowledge, on the part of this
day of .

(Signed) { A. B. } or { P. A., plaintiff's [*or defendant's*]
 { C. D. } proctor, solicitor or attorney.

No. 26.—Entry on the Record of a Verdict for Plaintiff.

Afterwards, on the day of 18 before
the Judge of her Majesty's Court of Probate, come the
parties within mentioned, by their respective attornies [*or as
the case may be*] within mentioned, and a jury duly summoned
also come, who, being sworn to try the matters in question
between the parties, upon their oath say, that [*state the affir-*

Contentious Business. *mative or negative of the issue, as it is found for the plaintiff, and in the terms adopted in the pleading].*

[If there be several issues joined and tried, then say] as to the first issue within joined upon their oath say, that [here state the affirmative or negative of issue, as found for plaintiff], and as to the second issue within joined the jury aforesaid upon their oath say, &c. [so proceed, to state the finding of the jury on all the issues]; and that with respect to the costs in the said cause the said Judge on the same day [as the case may be] directed [here insert direction as to costs].

(Signed) A. B., Registrar.

No. 27.—Entry on the Record of a Judgment for Plaintiff.

Afterwards, on the day of 18 before the Judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attornies [*or as the case may be*] within mentioned: whereupon the Judge decreed [*here insert the tenor of the decree*].

(Signed) A. B., one of the registrars of her Majesty's Court of Probate.

No. 28.—Inventory.

A true, full and particular inventory of all and singular the personal estate and effects of A. B., late of deceased, which have at any time since his death come to the hands, possession or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [*or administrator, as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or solemn affirmation*] of the said C. D., as follows, to wit:

First, this exhibitant saith, that the said deceased	£	s.	d.
was at the time of his death possessed of			
[<i>The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular</i>].			

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time

since his death come to the hands, possession or knowledge of this exhibitant, save as is hereinbefore set forth.

Contentious
Business.

On the day of 18 (Signed) C. D.
sworn to [or solemnly affirmed] the truth of the above
inventory,

Before me,
[person authorized to administer oaths under the act].

No. 29.—Petition.

The day of 18 .
A. B. [or A. B., proctor solicitor, or attorney for C. D.,]
says, that

[Here insert all the facts which are to be alleged]:

Wherefore the said A. B. prays, that

[Here end with the prayer of the petitioner].

(Signed) A. B.

Answer.

The day of 18 .
E. F. [or E. F., proctor, solicitor or attorney for G. H.,]
says, that

[Here insert the facts alleged in answer].

Wherefore the said E. F. prays, that

[Here insert the prayer of the defendant].

(Signed) E. F.

The reply, rejoinder, &c. (if any such be necessary,) are to be followed out in the same form.

F E E S

To be taken in Court and Contentious Business in the
COURT OF PROBATE.

	£	s.	d.
On every citation	0	5	0
On every citation to see proceedings	0	5	0
On entering appearance	0	2	6
Filing declaration	0	5	0
Filing plea	0	5	0
Filing act on petition	0	5	0
Filing answer	0	5	0
Filing reply	0	5	0
Filing any further writing to the act	0	5	0
Filing inventory	0	5	0
On pleadings amended or reformed	0	2	6
Filing interrogatories	0	5	0
Filing answers to interrogatories	0	5	0
Filing affidavit as to scripts	0	2	6
Filing every script annexed to such affidavit	0	5	0
Filing case for motion	0	5	0
For entering the order of court on motion	0	5	0
Summons to attend in chambers	0	2	6
For entering the order of court on summons	0	2	6
Filing notices	0	1	0
On depositing the record	1	0	0
Setting a cause down for hearing or trial	0	5	0
Entering the final decree in a cause	0	10	0
Entering special verdict, if five folios of seventy-two words or under	0	2	6
If exceeding five folios, per folio of seventy-two words	0	0	6
Entering order appointing a receiver of real estate	1	0	0
Entering decree or order in pursuance of judgment of an extinct court	0	10	0
Entering any order or decree made with consent of parties by the Judge.. .. .	0	10	0
Entering any order or decree in the court book, not otherwise specified	0	2	6
On withdrawal of a cause after the same is set down for hearing or trial, to be paid by the party at whose instance it is withdrawn	0	5	0

On the hearing or trial of a cause :	£	s.	d.
From the plaintiff	1	0	0
From the defendant	0	15	0
If the hearing or trial continues more than one day, for each day :			
From the plaintiff	0	10	0
From the defendant	0	10	0
Reducing into writing any question to be submitted to a jury under the Judge's direction	1	0	0
Producing the Judge's notes	0	5	0
Bill of exceptions signed by the Judge	0	5	0
Entering on the record the finding of the jury or the decision of the Judge	0	5	0
On every subpoena	0	2	6
On every commission issuing under seal of the court	1	0	0
Writ of attachment	0	7	6
Writ of sequestration	1	0	0
Filing certificate of County Court Judge	0	1	0
Search in court books, if within the last five years	0	1	0
If at an earlier period than within the last five years	0	2	6
Bond to be executed as security for costs or by receiver of real estate, or for any other purpose or by any other person :			
If three folios of seventy-two words or under	0	5	0
If above three folios of seventy-two words, per folio	0	2	0
Assignment of bond	0	5	0
Filing and entry of remission of appeal	0	10	0
Filing exhibits, not exceeding ten folios each exhibit	0	1	0
If exceeding ten but not exceeding twenty	0	10	0
If exceeding twenty but not exceeding fifty	0	15	0
If exceeding fifty	1	0	0
Office copies of orders or decrees, Judge's notes, or other documents filed in a cause :			
If five folios of seventy-two words or under	0	2	6
If exceeding five folios of seventy-two words, per folio	0	0	6
Filing every affidavit or other document brought into court, and deposited in the registry, not otherwise specified	0	2	6
Taxing every bill of costs :—			
If three folios of seventy-two words or under	0	2	6
If exceeding three folios of seventy-two words :			
When taxed as between party and party, per folio	0	0	6
When taxed as between practitioner and client, per folio	0	1	0
Office copy of will under seal of the court :			
In addition to fees of the office copy of the will	1	0	0
Commissioner of the court for administering oaths to each deponent	0	1	6
Examiner appointed to take depositions under a commission for examination of witnesses, for each day's attendance, besides travelling expenses	3	3	0

F E E S

To be taken by OFFICERS of the COUNTY COURTS in respect of business under the Act.

The same Fees as in case of a Plaintiff for a sum of £20.

F E E S

To be taken FOR THEIR OWN USE, by the Proctors, Solicitors and Attornies practising in the Court of Probate in

CONTENTIOUS BUSINESS.

	£	s.	d.
Citation including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service	0	2	6
Subpœna ad testificandum	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under	0	5	0
If exceeding five folios, per folio	0	1	0
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Service of citation or subpœna, if within two miles of the place of business of the practitioner or of the person employed to effect the service	0	5	0
If beyond that distance and not exceeding ten miles, for every mile one way	0	1	0
Affidavit of service, if three folios of seventy-two words or under	0	5	0
If above, for every folio, including copy	0	1	4
In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, except in Scotland and Ireland, a sum to be allowed for service according to the circumstances.			

Instructions.

Instructions for citation, for pleadings, for interrogatories, for				£	s.	d.
special affidavits, or for inventories	..	..	..	0	6	8
Ditto to defend suit	..	..	..	0	6	8
Ditto for brief, or case for hearing	..	..	..	0	13	4

Pleadings and Copies.

Drawing and engrossing declaration, if ten folios of seventy-two words or under	..	..	..	1	0	0
If exceeding ten folios, for every additional folio	..	..	..	0	1	4
Drawing and engrossing pleas, replications, and other pleadings, if ten folios of seventy-two words or under	..	..	..	1	0	0
If exceeding ten folios, for every additional folio	..	..	..	0	1	4
Copies of declaration or pleas to file, at per folio of seventy-two words	..	..	..	0	0	4
Drawing the issue, if fifteen folios, of seventy-two words or under, including copy	..	..	..	0	10	0
If exceeding fifteen folios, per folio, including copy	..	..	..	0	0	8
Engrossing record to file, at per folio of seventy-two words	..	..	..	0	0	6
All copies on parchment, per folio of seventy-two words, including the parchment	..	..	..	0	0	6
Drawing and engrossing demurrer, inclusive of the statement of any matter of law to be argued, for ten folios of seventy-two words or under	..	..	..	0	10	0
If exceeding ten folios of seventy-two words, per folio	..	..	..	0	1	0
Copy to file, at per folio of seventy-two words	..	..	..	0	0	4
Copy of the issue on demurrer, at per folio of seventy-two words	..	..	..	0	0	4
Drawing and engrossing special case, or case for motion, per folio of seventy-two words	..	..	..	0	1	4
Drawing bill of costs and copy for taxation, per folio of seventy-two words	..	..	..	0	1	0
Copy for the adverse party, per folio of seventy-two words	..	..	..	0	0	4
Drawing any instrument to be filed in or issued by the registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	..	..	..	0	1	4

Notices.

All necessary notices, if three folios or under, inclusive of copy and service	..	..	..	0	5	0
If exceeding three folios, for every additional folio	..	..	..	0	1	0
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation.						
Copy of summons or order of the Judge and service	..	..	..	0	5	0

Attendances.

Attendance to search for appearance to citation, or subpoena to bring in scripts	£	s.	d.
For attendance on counsel with brief, when the fee to counsel is one guinea	0	3	4
When the fee to counsel exceeds one guinea and is under five guineas	0	6	8
When the fee is five guineas and upwards	0	13	4
Attendance on consultation	0	13	4
Attendance on conference	0	6	8
Attendance in pursuance of notice to admit	0	6	8
For every hour after the first	0	6	8
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in court	0	13	4
On trial or hearing	1	1	0
If it lasts the whole day	2	2	0
Attendance on taxation of bill of costs	0	13	4
If very long an additional fee will be allowed.			
Attendance on examination of witnesses under a commission—			
If in England or Wales, per diem	2	2	0
If elsewhere	3	3	0
For all necessary attendances in chambers before the Judge or before a commissioner, on counsel, in the registry, or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	6	8

Briefs and Cases for Hearing.

For drawing same per folio of seventy-two words	0	1	0
For each copy, per folio of seventy-two words	0	0	4
Letters. Every necessary letter during the dependence of the cause	0	3	6
Term fees and letters and messengers each term in which any business is done	0	15	0
For maps or plans each from {	1	1	0
	to		
	3	3	0
Copies of same if required each from {	0	10	0
	to		
	1	0	0

Affidavits.

Drawing special affidavits, per folio of seventy-two words, and copy for the court	0	1	4
Common affidavit, if five folios or under, including copy for the court or registry	0	6	8
If above five folios, per folio including copy	0	1	4
Defendants—			
Entering appearance	0	6	8

Interrogatories.

	£	s.	d.
For drawing the same, at per folio of seventy-two words ..	0	1	0
Copy thereof to be delivered to the examiner and filed, at per folio of seventy-two words	0	0	4

Copies of Scripts or Exhibits.

For every plain copy of a script, exhibit, or other instrument filed in the registry, per folio of seventy-two words ..	0	0	4
If the same or any part thereof are required to be made <i>fac simile</i> , in addition to the above per folio of seventy-two words	0	0	2

If in any court or contentious business it should become necessary for proctors, solicitors or attornies to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the courts of common law and equity, as the case may be.

F E E S

To be taken FOR THE USE OF OTHER PERSONS by the Proctors, Solicitors and Attornies practising in the Court of Probate in

CONTENTIOUS BUSINESS.

Counsel's Clerks' Fees.

Not to exceed as under :—				£	s.	d.
Upon a fee to counsel under 5 guineas	..	..	..	0	2	6
5 guineas and under 10 guineas	..	..	..	0	5	0
10 guineas and under 20 guineas	..	..	..	0	10	0
20 guineas and under 30 guineas	..	..	..	0	15	0
30 guineas and under 50 guineas	..	..	..	1	0	0
50 guineas and upwards—at per cent. on the fee paid				2	10	0
On consultations:						
Senior's clerk	..	..	..	0	7	6
Junior's clerk	..	..	..	0	2	6
On general retainer	..	..	..	0	10	6
On common retainer	..	..	..	0	2	6
On conference	..	..	..	0	5	0

Witnesses' Expenses.

Allowance to witnesses, including their board and lodging, as between party and party: £ s. d.

Common witnesses, such as labourers, journeymen, &c. &c.:

If resident within five miles of the General Post

Office, per diem 0 5 0

If beyond that distance, per diem 0 7 6

Master tradesmen, yeomen, farmers, &c.:

If resident within five miles of the General Post

Office, per diem 0 10 0

If resident beyond that distance, per diem .. 0 15 0

Auctioneers and accountants:

If resident within five miles of the General Post

Office, per diem 1 1 0

If resident beyond that distance, per diem .. 2 2 0

Professional men, including notaries, engineers, and surveyors, &c.:

If resident within five miles of the General Post

Office, per diem 1 1 0

If resident beyond that distance, per diem .. 3 3 0

Clerks to attorneys or others:

If resident within five miles of the General Post

Office, per diem 0 10 6

If resident beyond that distance, per diem .. 1 1 0

Esquires, bankers, merchants, and gentlemen, per diem 1 1 0

Females according to station in life:

If resident within five miles of the General Post { 0 5 0

Office, per diem, from { to

0 10 0

If resident beyond that distance, per diem, from .. { 0 7 6

to

1 0 0

Police inspector:

If resident within five miles of the General Post

Office, per diem 0 7 6

If resident beyond that distance, per diem .. 0 10 0

Police constable:

If resident within five miles of the General Post

Office, per diem 0 5 0

If resident beyond that distance, per diem .. 0 7 6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1s. per mile one way.

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"British, Saxon, Danish, Norman customs. And surely as our language
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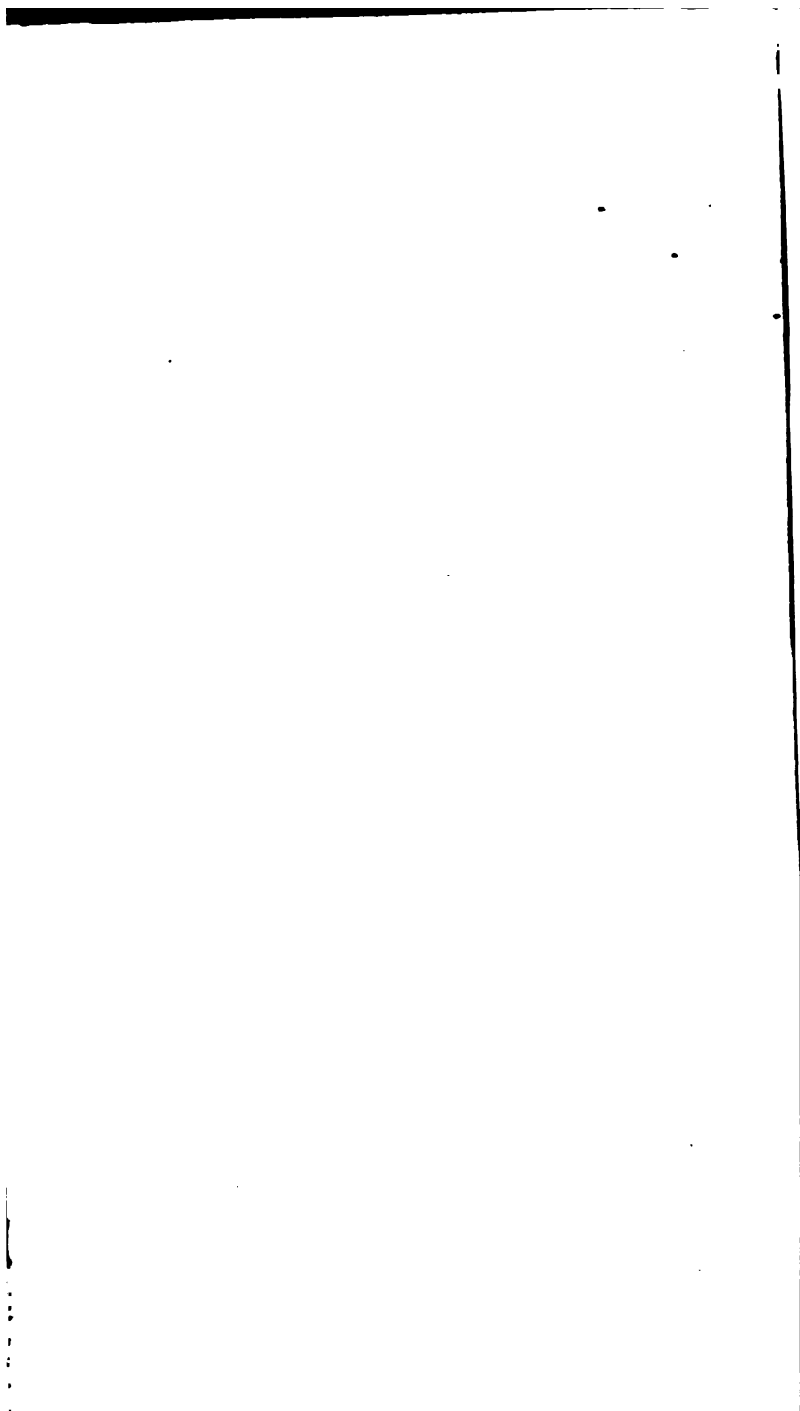
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